

ORAL ARGUMENT NOT YET SCHEDULED

NO. 18-1187 (CONSOLIDATED WITH NO. 18-1217)

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

KITSAP TENANT SUPPORT SERVICES INC.,

Petitioner/Cross-Respondent,

V.

NATIONAL LABOR RELATIONS BOARD,

Respondent/Cross-Petitioner.

**ON PETITION FOR REVIEW FROM A DECISION OF THE NATIONAL
LABOR RELATIONS BOARD**

**APPENDIX FOR PETITIONER
KITSAP TENANT SUPPORT SERVICES INC.
VOLUME I**

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November 19, 2018

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INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case

19-CA-74715

Date Filed

2/16/2012

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Kitsap Tenant Support Services, Inc.		b. Tel. No. 360-373-4173
		c. Cell No.
		f. Fax No. 360-377-9946
d. Address (Street, city, state, and ZIP code) 109 Olding Road Bremerton, WA 98312	e. Employer Representative Alan Frey	g. e-Mail afrey@ktssinc.com
		h. Number of workers employed 142
i. Type of Establishment (factory, mine, wholesaler, etc.) Direct Service Provider	j. Identify principal product or service Direct Service Support	

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

See attached

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

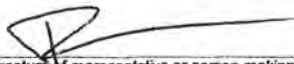
Washington Federation of State Employees, Council 28, AFSCME, AFL-CIO

4a. Address (Street and number, city, state, and ZIP code) 1212 Jefferson Street SE, Suite 300 Olympia, WA 98501	4b. Tel. No. 360-349-7800
	4c. Cell No.
	4d. Fax No. 360-352-7608
	4e. e-Mail timt@wfse.org

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) AFSCME

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By  (signature of representative or person making charge)	Tim Tharp (Print/type name and title or office, if any)	Tel. No. same
		Office, if any, Cell No.
		Fax No. same
		e-Mail same
Address same as above	2/15/12 (date)	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

GENERAL COUNSEL
EXHIBIT NO. 1(a)

Attachment to Unfair Labor Practice Charge Against Employer – Kitsap Tenant Support Services

2. Basis of the Charge(*set forth a clear and concise statement of the facts constituting the alleged unfair labor practices*)

Within the last six months, the Employer interrogated employees and threatened employees with unspecified retaliation for supporting a union/ engaging in protected concerted activities.

Within the last six months, the Employer has interfered with, restrained or coerced employees in the exercise of their rights guaranteed in Section 7 of the Act by increasing scrutiny of their work.

Within the last six months, the Employer reduced Barbara Mitchell's scheduled work hours in retaliation for her union and/or protected concerted activities.

On or about December 7, 2011, the Employer terminated Bonnie Minor in retaliation for her union and/or protected concerted activities.

On or about December 22, 2011, the Employer placed Alicia Sale and Hannah Gates on unpaid administrative leave, and on about February 1, 2012, terminated them in retaliation for their union and/or protected concerted activities.

On or about Monday January 31, 2012, the Employer suspended Christina Chailante and on about February 1, 2012, terminated her in retaliation for her union and/or protected concerted activities.

On or about Wednesday February 15, 2012, the Employer placed Terry Owens on unpaid administrative leave in retaliation for his union and/or protected concerted activities.

By these and other acts, the Employer through its officers, agents or representatives, has interfered with, restrained or coerced employees in the exercise of their rights guaranteed in Section 7 of the Act.

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case

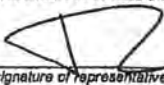
19-CA-79006

Date Filed

4/17/2012

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Kitsap Tenant Support Services, Inc.	b. Tel. No. 360-373-4173
	c. Cell No.
	f. Fax No. 360-377-9946
d. Address (Street, city, state, and ZIP code) 109 Olding Road Bremerton, WA 98312	e. Employer Representative Alan Frey
	g. e-Mail afrey@ktssinc.com
	h. Number of workers employed 142
i. Type of Establishment (factory, mine, wholesaler, etc.) Direct Service Provider	j. Identify principal product or service Direct Service Support
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) On or about March 28, 2012, the Employer terminated Terry Owens in retaliation for his union/or or protected concerted activities. Within the last six months, the Employer has retaliated against employees by imposing more onerous working conditions such as requiring the completion of 15-minute reports. Since on or about January 5, 2012, the Employer retaliated against employees for engaging in union activities by withholding their paychecks until January 10, 2012.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Washington Federation of State Employees, Council 28, AFSCME, AFL-CIO	
4a. Address (Street and number, city, state, and ZIP code) 1212 Jefferson Street SE, Suite 300 Olympia, WA 98501	4b. Tel. No. 360-349-7800 360-951-7573 4c. Cell No. 4d. Fax No. 360-352-7608 4e. e-Mail timt@wfse.org
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) AESME AFSCME, COUNCIL 28	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (signature of representative or person making charge)	Tim Tharp (Print/type name and title or office, if any)
Address same as above	4/17/12 (date)
Tel. No. same	
Office, if any, Cell No.	
Fax No. same	
e-Mail same	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

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GENERAL COUNSEL
EXHIBIT NO. 1(c)

INTERNET
FORM NLRB-601
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

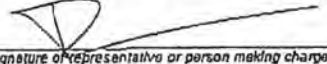
FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case	Date Filed
19-CA-8 2869	6 / 11 / 20 12

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Kitsap Tenant Support Services	b. Tel. No. 360-373-4173
	c. Cell No.
	f. Fax No. 360-377-9946
d. Address (Street, city, state, and ZIP code) 109 Olding Road Bremerton, WA 98312	e. Employer Representative Alan Frey
	g. e-Mail afrey@ktssinc.com
	h. Number of workers employed 142
i. Type of Establishment (factory, mine, wholesaler, etc.) Direct Service Provider	j. Identify principal product or service Direct Service Support
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) On or about June 6, 2012, the Employer discriminatorily disciplined Johnnie Driskell, a member of the Union elected bargaining team, after she attended a union bargaining team training on June 4th, in retaliation for her union and or protected concerted activities. On or about June 8th, 2012, the Employer discriminatorily placed Gary Martell, a member of the Union elected bargaining team, on Administrative Leave without Pay all in retaliation for his union and or protected concerted activities.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Washington Federation of State Employees, Council 28, AFSCME, AFL-CIO	
4a. Address (Street and number, city, state, and ZIP code) 1212 Jefferson St SE, Ste 300 Olympia, WA 98501	4b. Tel. No. 4c. Cell No. 360-349-7800 4d. Fax No. 360-352-4730 4e. e-Mail timt@wfse.org
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) WFSE/AFSCME Council 28, AFL-CIO	
8. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief. By  Tim Tharp (signature of representative or person making charge) (Print type name and title or office, if any) Address same as above 06/11/2012 (date)	
Tel. No. Office, if any, Cell No. same Fax No. same e-Mail same	

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PRIVACY ACT STATEMENT

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GENERAL COUNSEL
EXHIBIT NO. 10

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 19

KITSAP TENANT SUPPORT SERVICES, INC.

and

Cases 19-CA-74715
19-CA-79006

WASHINGTON FEDERATION OF STATE
EMPLOYEES, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL 28, AFL-CIO

**ORDER CONSOLIDATING CASES, CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

Washington Federation of State Employees, American Federation of State, County and Municipal Employees, Council 28, AFL-CIO (the "Union"), has charged in Cases 19-CA-074715 and 19-CA-079006, that Kitsap Tenant Support Services, Inc. ("Respondent"), has been engaging in unfair labor practices as set forth in the National Labor Relations Act (the "Act"), 29 U.S.C. § 151, *et seq.*

Pursuant to §102.33 of the Rules and Regulations of the National Labor Relations Board, and to avoid unnecessary costs or delay, IT IS ORDERED THAT the charges in Cases 19-CA-074715 and 19-CA-079006 filed by the Union against Respondent are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to §10(b) of the Act and §102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act by engaging in the following unfair labor practices:

GENERAL COUNSEL
EXHIBIT NO. 1(i)

1.

(b) The charge in Case 19-CA-074715 was filed by the Union on February 15, 2012, and a copy was served by regular mail on Respondent on or about February 16, 2012.

(c) The charge in Case 19-CA-079006 was filed by the Union on April 17, 2012, and a copy was served by regular mail on Respondent on or about that date.

2.

(a) At all material times, Respondent has been a State of Washington Corporation with an office and place of business in Bremerton, Washington ("Respondent's facility"), engaged in the business of providing residential support services.

(b) Respondent, during the past 12 months, which period is representative of all times material, in conducting its business operations described above in paragraph 2(a), had gross revenues valued in excess of \$250,000.

(c) During the same period, Respondent performed services valued in excess of \$50,000 for the State of Washington, an enterprise directly engaged in interstate commerce.

(d) At all material times Respondent has been engaged in commerce within the meaning of §§ 2(2), (6), and (7) of the Act.

3.

The Union is, and has been at all material times, a labor organization within the meaning of § 2(5) of the Act.

4.

At all material times Alan Frey has held the position of Program Manager, and has been a supervisor within the meaning of § 2(11) of the Act and an agent of Respondent within the meaning of § 2(13) of the Act.

5.

Respondent, by Frey:

(a) About December 16, 2011, by telephone, made coercive statements about an employee's union membership, activities, and sympathies, and the union membership, activities, and sympathies of other employees;

(b) About December 19, 2011, at Respondent's facility, made coercive statements about an employee's union membership, activities, and sympathies, and the union membership, activities, and sympathies of other employees; and

(c) About December 19, 2011, at Respondent's facility, threatened its employees with unspecified reprisals because of their support of the Union.

6.

(a) About December 7, 2011, Respondent discharged its employee Bonnie Minor;

(b) About December 22, 2011, Respondent suspended its employee Alicia Sale;

(c) About December 22, 2011, Respondent suspended its employee Hannah Gates;

(d) About February 1, 2012, Respondent discharged its employee Alicia Sale;

(e) About February 1, 2012, Respondent discharged its employee Hannah Gates;

(f) About February 15, 2012, Respondent suspended its employee Terry Owens; and

(g) About March 28, 2012, Respondent discharged its employee Terry Owens.

(h) Respondent engaged in the conduct described above in paragraphs 6(a)-(g) because Respondent's named employees assisted the Union and engaged in protected, concerted activities, and/or to discourage employees from engaging in these or other union and/or protected, concerted activities.

7.

By the conduct described above in paragraph 5, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in §7 of the Act in violation of §8(a)(1) of the Act.

8.

By the conduct described above in paragraph 6, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its

employees, thereby discouraging membership in a labor organization in violation of §§8(a)(1) and (3) of the Act.

9.

The unfair labor practices of Respondent described above affect commerce within the meaning of §§2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 5 and 6, the Acting General Counsel seeks an Order requiring Respondent to copy and mail, at its own expense, a copy of the Notice to all current and former employees who were employed at any time since December 1, 2011.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraph 6, the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination.

WHEREFORE, the Acting General Counsel further seeks, as part of the remedy for the allegations in paragraph 6, that Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods. The Acting General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to §§ 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Consolidated Complaint. The answer must be **received by this office on or before July 6, 2012, or**

postmarked on or before July 5, 2012. Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. To file an Answer electronically, go to www.nlr.gov and select the "File Case Documents" option. Then click on the E-file tab and follow the instructions presented. Guidance for E-filing is contained in the attachment supplied with the Regional office's original correspondence in this matter, and is also available on www.nlr.gov under the E-file tab. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See § 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf document containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional

Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of § 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on the 28th day of August, 2012, in the James C. Sand Hearing Room, 29th Floor, Jackson Federal Building, 915 Second Avenue, Seattle, Washington, and continuing on consecutive days thereafter until concluded, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Consolidated Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Seattle, Washington, this 22nd day of June, 2012.



Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174-1078

FORM NLRB-4668
(4-05)

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

FORM NLRB-4668
(4-05) Continued

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8 1/2 by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

NLRB Form 4338 6-22-12

FORM NLRB-4338
(6-90)UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICECase: 19-CA-74715
19-CA-79006

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; **and**
- (5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

CERTIFIED MAIL NO.
7010 1870 0002 5587 9998

ALAN FREY
KITSAP TENANT SUPPORT SERVICES, INC.
109 OLDING RD
BREMERTON, WA 98312-1806

REGULAR MAIL

TIM THARP, ORGANIZER
WFSE COUNCIL 28/AFSCME
1212 JEFFERSON ST SE STE 300
OLYMPIA, WA 98501-2332

REGULAR MAIL

GARY E. LOFLAND, ATTORNEY
LOFLAND & ASSOCIATES
9 N 11TH AVE
YAKIMA, WA 98902-3016

JUL 25 2012 WED 05:25 PM

INTERNET FORM NLRB-801 (2-28) AMENDED		UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST EMPLOYER		FORM EXEMPT UNDER 44 U.S.C. 3512	
DO NOT WRITE IN THIS SPACE					
Case 19-CA-082869		Data Filed 6/11/2012 Amc: 7/25/2012			
INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.					
1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT					
b. Name of Employer KITSAP TENANT SUPPORT SERVICES, INC.		b. Tel. No. 360-373-4173			
		c. Cell No.			
		f. Fax No. 360-377-9946			
d. Address (Street, city, state, and ZIP code) 109 OLDING ROAD BREMERTON, WA 98312		e. Employer Representative ALAN FREY		g. e-Mail afrey@ktssinc.com	
		h. Number of workers employed 142			
i. Type of Establishment (factory, mine, wholesaler, etc.) DIRECT SERVICE PROVIDER		j. Identify principal product or service DIRECT SERVICE SUPPORT			
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 3 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.					
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) On or about June 6, 2012, the Employer discriminatorily disciplined Johnnie Driskell, a member of the Union elected bargaining team, after she attended a union bargaining team training on June 4th, in retaliation for her union and or protected concerted activities. On or about July 23, 2012 the Employer placed Johnnie Driskell on Administrative Leave without Pay all in retaliation for her union and or protected concerted activities On or about June 8th, 2012, the Employer discriminatorily placed Gary Martell, a member of the Union elected bargaining team, on Administrative Leave without Pay all in retaliation for his union and or protected concerted activities. On or about July 19, 2012, the Employer discriminatorily terminated Gary Martell in retaliation for his union and or protected concerted activities.					
3. Full name of party filing charge (if labor organization, give full name, including local name and number) WASHINGTON FEDERATION OF STATE EMPLOYEES, COUNCIL 28, AFSCME, AFL-CIO					
4a. Address (Street and number, city, state, and ZIP code) 1212 JEFFERSON ST SE, STE 300 OLYMPIA, WA 98501		4b. Tel. No. 4c. Cell No. 360-349-7800 4d. Fax No. 360-352-7608 4e. e-Mail timt@wfse.org			
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) WFSE/AFSCME COUNCIL 28, AFL-CIO					
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief. By  (signature of representative or person making charge) Address SAME AS ABOVE		TIM THARP (print/type name and title or office, if any)		Tel. No. SAME Office, if any Cell No. Fax no. SAME e-Mail SAME	
		07/25/2012 (date)			

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

GENERAL COUNSEL
EXHIBIT NO. 1(g)

JUL-25-2012 17:04

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P. 03

JUL 25 2012 WED 11:00 AM

INTERNET
FORM (NLRB-501)
(2-06)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 2512

DO NOT WRITE IN THIS SPACE

Case

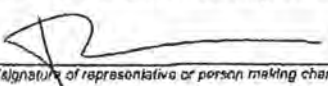
19-CA-86006

Date Filed

7/25/2012

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer KITSAP TENANT SUPPORT SERVICES, INC.	b. Tel. No. 360-373-4173
	c. Cell No.
	f. Fax No. 360-377-9946
d. Address (Street, city, state, and ZIP code) 109 OLDING ROAD BREMERTON, WA 98312	e. Employer Representative ALAN FREY
	g. e-Mail afrey@ktsinc.com
	h. Number of workers employed 142
i. Type of Establishment (factory, mine, wholesaler, etc.) DIRECT SERVICE PROVIDER	j. Identify principal product or service DIRECT SERVICE SUPPORT
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 1 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) The employer maintains, publishes and enforces policies and procedures that illegally restrain and coerce employees.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) WASHINGTON FEDERATION OF STATE EMPLOYEES, COUNCIL 28, AFSCME, AFL-CIO	
4a. Address (Street and number, city, state, and ZIP code) 1212 JEFFERSON ST SE, STE 300 OLYMPIA, WA 98501	4b. Tel. No.
	4c. Cell No. 360-349-7800
	4d. Fax No. 360-352-7608
	4e. e-Mail timt@wfse.org
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) WFSE/AFSCME COUNCIL 28, AFL-CIO	
5. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (signature of representative or person making charge)	TIM THARP (Print type name and title or office, if any)
Address SAME AS ABOVE	07/25/2012 (date)
	Tel. No. SAME
	Office, if any, Cell No.
	Fax No. SAME
	e-Mail SAME

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

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GENERAL COUNSEL
EXHIBIT NO. 1(m)

JUL-25-2012 11:34

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INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

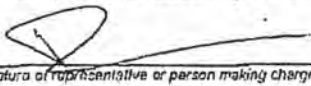
FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case 19-CA-88935	Date Filed 9/10/2012
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INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer KITSAP TENANT SUPPORT SERVICES, INC.	b. Tel. No. 360-373-4173
	c. Cell No.
	f. Fax No. 360-377-9946
d. Address (Street, city, state, and ZIP code) 109 OLDING ROAD BREMERTON, WA	e. Employer Representative MICHAEL E CLOSSER
	g. e-Mail mclosser@ktssinc.com
	h. Number of workers employed 150
i. Type of Establishment (factory, mine, wholesaler, etc.) DIRECT SERVICE PROVIDER	j. Identify principal product or service DIRECT SERVICE SUPPORT
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(e), subsections (1) and (list subsections) 3 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) SINCE ON OR ABOUT MAY 8, 2012; JULY 24, 2012; AND AUGUST 7, 2012, THE EMPLOYER DISCRIMINATIVELY DISCIPLINED LENORA JONES, IN RETALIATION FOR HER UNION AND OR PROTECTED ACTIVITIES.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) WASHINGTON FEDERATION OF STATE EMPLOYEES, AFSCME COUNCIL 28, AFL-CIO	
4a. Address (Street and number, city, state, and ZIP code) 1212 JEFFERSON ST SE, STE 300 OLYMPIA, WA 98501	4b. Tel. No. 360-349-7800
	4c. Cell No.
	4d. Fax No. 360-352-4730
	4e. e-Mail TIMT@WFSE.ORG
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) WFSE/AFSCME COUNCIL 28, AFL-CIO	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (Signature of representative or person making charge)	TIM THARP (Print type name and title or office, if any)
Address SAME	09/10/2012 (date)
Tel. No. SAME	
Office, if any, Cell No.	
Fax No. SAME	
e-Mail SAME	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

GENERAL COUNSEL
EXHIBIT NO. 100

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INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

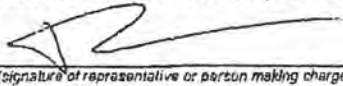
FORM EXEMPT UNDER 44 U.S.C. 3612

DO NOT WRITE IN THIS SPACE

Case	Date Filed
19-CA-88938	9/10/2012

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer KITSAP TENANT SUPPORT SERVICES, INC.	b. Tel. No. 360-373-4173
	c. Cell No.
	f. Fax No. 360-377-9946
d. Address (Street, city, state, and ZIP code) 109 OLDING ROAD BREMERTON, WA	e. Employer Representative MICHAEL E CLOSSER
	g. e-Mail mclosser@ktssinc.com
	h. Number of workers employed 150
i. Type of Establishment (factory, mine, wholesaler, etc.) DIRECT SERVICE PROVIDER	j. Identify principal product or service DIRECT SERVICE SUPPORT
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 3 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) SINCE ON OR ABOUT MARCH 14, 2012; MARCH 16, 2012; MARCH 18, 2012; JULY 1, 2012; AUGUST 15, 2012; AND AUGUST 20, 2012, THE EMPLOYER DISCRIMINATIVELY DISCIPLINED LISA HENNINGS, IN RETALIATION FOR HER UNION AND OR PROTECTED ACTIVITIES.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) WASHINGTON FEDERATION OF STATE EMPLOYEES, AFSCME COUNCIL 28, AFL-CIO	
4a. Address (Street and number, city, state, and ZIP code) 1212 JEFFERSON ST SE, STE 300 OLYMPIA, WA 98501	4b. Tel. No. 360-349-7800
	4c. Cell No.
	4d. Fax No. 360-352-4730
	4e. e-Mail TIMT@WFSE.ORG
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filed in when charge is filed by a labor organization) WFSE/AFSCME COUNCIL 28, AFL-CIO	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (signature of representative or person making charge)	TIM THARP (Print/type name and title or office, if any)
	Tel. No. SAME
	Office, if any, Cell No.
	Fax No. SAME
	e-Mail SAME
Address SAME	(date) 9/10/12 09/10/2012

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

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GENERAL COUNSEL
EXHIBIT NO. 1(u)

SEP-10-2012 13:12

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P. 02

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case
19-CA-90108Date Filed
9/26/2012

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Kitsap Tenant Support Services		b. Tel. No. 360-373-4173
		c. Cell No.
		f. Fax No. (703)749-7990
d. Address (Street, city, state, and ZIP code) 109 Olding Road Bremerton, WA 98312	e. Employer Representative Alan Frey	g. e-Mail
		h. Number of workers employed 142
i. Type of Establishment (factory, mine, wholesaler, etc.) direct service provider	j. Identify principal product or service direct service support	

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the last 6 months, the Employer, through its officers, agents, or representatives, has unilaterally changed its past practice of not enforcing and/or not strictly enforcing its rules, policies, and/or procedures and has implemented a new practice of strictly enforcing those rules, policies, and/or procedures through initiating a new progressive disciplinary process, all without providing the Union with notice and/or an opportunity to bargain over such changes.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)


Washington Federation of State Employees, Council 28, AFSCME, AFL-CIO

4a. Address (Street and number, city, state, and ZIP code) 1212 Jefferson Street SE, STE 300 Olympia, WA 98501	4b. Tel. No.
	4c. Cell No. 360-349-7800
	4d. Fax No. 360-3552-7608
	4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) WFSE/AFSCME Council 28, AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By  Tim Tharp, Journey Organizer
(signature of representative or person making charge) (Print/type name and title or office, if any)

Tel. No.
same

Office, if any, Cell No.

Fax No.

e-Mail
same

Address same as above

9/26/12
(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary, however, failure to supply the information will cause the NLRB to decline to invoke its processes.

GENERAL COUNSEL

EXHIBIT NO. 1(a)

OCT 01 2012 MON 10:24 AM

FORM EXEMPT UNDER 44 U.S.C. 3512

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

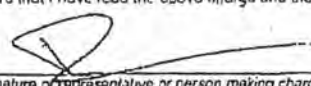
DO NOT WRITE IN THIS SPACE

Case
19-CA-88935
Date Filed 9/10/12
Amd: 10/1/12

AMENDED

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer KITSAP TENANT SUPPORT SERVICES, INC.	b. Tel. No. 360-373-4173
	c. Cell No.
	f. Fax No. 360-377-9946
d. Address (Street, city, state, and ZIP code) 109 OLDING ROAD BREMERTON, WA	e. Employer Representative MICHAEL E CLOSSER
	g. e-Mail mclosser@ktssinc.com
	h. Number of workers employed 150
i. Type of Establishment (factory, mine, wholesaler, etc.) DIRECT SERVICE PROVIDER	j. Identify principal product or service DIRECT SERVICE SUPPORT
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (1)(c) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) SINCE ON OR ABOUT MAY 8, 2012; JULY 24, 2012; AND AUGUST 7, 2012, THE EMPLOYER DISCRIMINATIVELY DISCIPLINED LENORA JONES, IN RETALIATION FOR HER UNION AND OR PROTECTED ACTIVITIES. including placing her on unpaid administrative leave on or about September 28, 2012; 10/1/12	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) WASHINGTON FEDERATION OF STATE EMPLOYEES, AFSCME COUNCIL 28, AFL-CIO	
4a. Address (Street and number, city, state, and ZIP code) 1212 JEFFERSON ST SE, STE 300 OLYMPIA, WA 98501	4b. Tel. No. 360-349-7800
	4c. Cell No.
	4d. Fax No. 360-352-4730
	4e. e-Mail TIMT@WFSE.ORG
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) WFSE/AFSCME COUNCIL 28, AFL-CIO	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (signature of representative or person making charge)	TIM THARP (Print type name and title or office, if any)
SAME	09/10/2012 (date)
Address	
Tel. No. SAME	
Office, if any, Cell No.	
Fax No. SAME	
e-Mail SAME	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

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GENERAL COUNSEL
EXHIBIT NO. 1(g)

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FORM EXEMPT UNDER 48 U.S.C. 3512

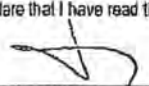
INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

2nd. AMENDED

DO NOT WRITE IN THIS SPACE	
Case 19-CA-82869	Date Filed 6/11/2012 And: 12/07/2012

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Kitsap Tenant Support Services, Inc.	b. Tel. No. 360-373-4173
	c. Cell No.
	f. Fax No. 360-377-9943
d. Address (Street, city, state, and ZIP code) 109 Olding Road Bremerton, WA 98312	e. Employer Representative Michael E Closser
	g. e-Mail mclosser@ktssinc.com
	h. Number of workers employed 150
i. Type of Establishment (factory, mine, wholesaler, etc.) Direct Service Provider	j. Identify principal product or service Direct Service Support
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) <u>3</u> of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Since on or about June 6, 2012, the Employer discriminatorily disciplined Johnnie Driskell, a member of the union elected bargaining team, after she attended a union bargaining team training on June 4th, in retaliation for her union and or protected concerted activities. On or about July 23, 2012 the Employer placed Johnnie Driskell on Administrative Leave Without Pay all in retaliation for her union and or protected concerted activities. On or about September 1, 2012 the Employer discriminatorily terminated Johnnie Driskell in retaliation for her union and or protected Concerted activities. Since on or about June 8th, 2012, the Employer discriminatorily placed Gary Martell, a member of the union elected bargaining team, on Administrative Leave Without Pay all in retaliation for his union and/or protected concerted activities. On or about July 19, 2012 the Employer discriminatorily terminated Gary Martell in retaliation for his union and or protected concerted activities.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Washington Federation of State Employees, Council 28, AFSCME, AFL-CIO	
4a. Address (Street and number, city, state, and ZIP code) 1212 Jefferson St SE, STE 300 Olympia, WA 98501	4b. Tel. No.
	4c. Cell No. 360-349-7800
	4d. Fax No. 360-352-7808
	4e. e-Mail tmt@wfse.org
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) WFSE/AFSCME COUNCIL 28, AFL-CIO	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (Signature of representative or person making charge)	TIM THARP (Print/Type name and title or office, if any)
Tel. No. SAME	
Office, if any, Cell No.	
Fax No. SAME	
e-Mail SAME	
Address SAME AS ABOVE	12/6/12 (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

GENERAL COUNSEL
EXHIBIT NO. 162

DEC-07-2012 15:53

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P. 02

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case

19-CA-96118


Date Filed

1/10/2013

INSTRUCTIONS:

1 original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Kitsap Tenant Support Services		b. Tel. No. 360-373-4173
		c. Cell No.
		f. Fax No.
d. Address (Street, city, state, and ZIP code) 109 Olding Road Bremerton, WA 98312	e. Employer Representative Michael Closser	g. e-Mail
		h. Number of workers employed 125
i. Type of Establishment (factory, mine, wholesaler, etc.) direct service provider	j. Identify principal product or service direct service support	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Washington Federation of State Employees, Council 28, AFSCME AFL-CIO is and has been at all times material to this Charge, the exclusive, statutory 9(a) bargaining representative of an appropriate unit of the Employer's employees. For the past six months immediately prior to the filing and service of this Charge upon the Employer, the Employer has engaged in surface bargaining, has made unilateral changes, has attempted to undermine the Union in the eyes of unit employees, and has otherwise failed and/or refused to bargain in good faith with the Union.		
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Washington Federation of State Employees, Council 28, AFSCME, AFL-CIO		
4a. Address (Street and number, city, state, and ZIP code) 1212 Jefferson Street SE, STE 300 Olympia, WA 98501		4b. Tel. No.
		4c. Cell No. 360-349-7800
		4d. Fax No. 360-352-7608
		4e. e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) WFSE/AFSCME Council 28, AFL-CIO		
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief. By  (signature of representative or person making charge) same as above		Tim Tharp, Journey Organizer (Print/type name and title or office, if any) 1/10/13 (date)
		Tel. No. same
		Office, if any, Cell No.
		Fax No.
		e-Mail same

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

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GENERAL COUNSEL

FORM EXEMPT UNDER 44 U.S.C. 3512

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

D. DO NOT WRITE IN THIS SPACE

Case
19-CA-90108Date Filed 9/26/2012
And: 1/10/2013

AMENDED

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Kitsap Tenant Support Services		b. Tel. No. 360-373-4173
d. Address (Street, city, state, and ZIP code) 109 Olding Road Bremerton, WA 98312		c. Cell No.
e. Employer Representative Alan Frey		f. Fax No. (703) 749-7990
i. Type of Establishment (factory, mine, wholesaler, etc.) direct service provider		g. e-Mail
j. Identify principal product or service direct service support		h. Number of workers employed 142
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) and (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the last 6 months, the Employer, through its officers, agents, or representatives, has unilaterally changed its past practice of not enforcing and/or not strictly enforcing its rules, policies, and/or procedures and has implemented a new practice of strictly enforcing the those rules, policies, and/or procedures through initiating a new progressive disciplinary process, all without providing the Union with notice and/or an opportunity to bargain over such changes, and for the purpose of retaliation and discrimination against employees due to their protected concerted and/or union activities.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Washington Federation of State Employees, Council 28, AFSCME, AFL-CIO

4a. Address (Street and number, city, state, and ZIP code)

1212 Jefferson Street SE, STE 300
Olympia, WA 98501

4b. Tel. No.

4c. Cell No. 360-349-7800

4d. Fax No. 360-3562-7608

4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) WFSE/AFSCME Council 28, AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By

(signature of representative or person making charge)

Tim Tharp, Journey Organizer

(Print/type name and title or office, if any)

Tel. No.

same

Office, if any, Cell No.

Fax No.

e-Mail

same

same as above

Press

1/10/12
(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses of the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

EXHIBIT NO. 1 (cc)

FORM EXEMPT UNDER 44 U.S.C. 3512

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case
19-CA-88935Date Filed 9/10/2012
Amd: 1/10/2013

2nd. AMENDED

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Kitsap Tenant Support Services		b. Tel. No. 360-373-4173
		c. Cell No.
		f. Fax No.
d. Address (Street, city, state, and ZIP code) 109 Olding Road Bremerton, WA 98312	e. Employer Representative Michael Closser	g. e-Mail
		h. Number of workers employed 125
i. Type of Establishment (factory, mine, wholesaler, etc.) direct service provider	j. Identify principal product or service direct service support	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Since on or about May 8, 2012, July 24, 2012, and August 7, 2012, the Employer discriminatorily disciplined Lenora Jones and on September 28, 2012 placed her on unpaid administrative leave, and on October 9, 2012 demoted her, all in retaliation for her union and protected concerted activities.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

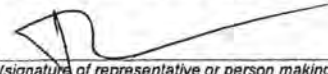
Washington Federation of State Employees, Council 28, AFSCME, AFL-CIO

4a. Address (Street and number, city, state, and ZIP code) 1212 Jefferson Street SE, STE 300 Olympia, WA 98501	4b. Tel. No.
	4c. Cell No. 360-349-7800
	4d. Fax No. 360-352-7608
	4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) WFSE/AFSCME Council 28, AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By 
(signature of representative or person making charge)

Tim Tharp, Journey Organizer

(Print/type name and title or office, if any)

same as above
ess1/10/13
(date)Tel. No. same
Office, if any, Cell No.
Fax No.
e-Mail same

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

EXHIBIT NO. 1(s)

JAN 30 2013 15:13

4. 002

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3512

3rd. AMENDED

DO NOT WRITE IN THIS SPACE

Case
19-CA-82869Date Filed 6/11/2012
And: 1/30/2013

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Kitsap Tenant Support Services		b. Tel. No. 360-373-4173
		c. Cell No.
		f. Fax No.
		g. e-Mail
		h. Number of workers employed 125
d. Address (Street, city, state, and ZIP code) 109 Olding Road Bremerton, WA 98312	e. Employer Representative Michael Clossar	
i. Type of Establishment (factory, mine, wholesaler, etc.) direct service provider	j. Identify principal product or service direct service support	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) On or about June 6, 2012, the above-named Employer (Employer) discriminatorily disciplined Johnnie Driskell; on or about July 23, 2012, the Employer discriminatorily placed Johnnie Driskell on administrative leave without pay, relying on the above-referenced discipline as well as on, among other things, disciplines on or about June 22, July 18, and/or July 22, in 2012; on or about September 1, 2012, the Employer terminated Johnnie Driskell. On or about June 8, 2012, the Employer discriminatorily placed Gary Martell on administrative leave without pay; and on or about July 19, 2012, discriminatorily terminated Gary Martell. The Employer took these adverse actions, as well as other adverse actions, against Johnnie Driskell and Gary Martell and in retaliation for her/his membership on a union elected bargaining team, in retaliation for her/his union activities, and/or in retaliation for her/his protected concerted activities.		

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Washington Federation of State Employees, Council 28, AFSCME, AFL-CIO

4a. Address (Street and number, city, state, and ZIP code)

1212 Jefferson Street SE, STE 300
Olympia, WA 98501

4b. Tel. No.

4c. Cell No. 360-349-7800

4d. Fax No. 360-352-7608

4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

WFSE/AFSCME Council 28, AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By



(signature of representative or person making charge)

Tim Tharp, Journey Organizer

(Print type name and title or office, if any)

Tel. No.

same

Office, if any, Cell No.

Fax No.

e-Mail

same

same as above

Address

1/30/13
(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

GENERAL COUNSEL

EXHIBIT NO. 1(K)

JAN-30-2013 15:13

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JAN 30 2013 15:13

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORA EXEMPT UNDER 44 U.S.C. 3512

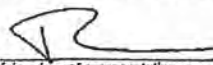
AMENDED

DO NOT WRITE IN THIS SPACE

Case
19-CA-88938Date Filed 9/10/2012
Amr: 1/30/2013

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Kitsap Tenant Support Services	b. Tel. No. 360-373-4173
	c. Cell No.
	f. Fax No.
d. Address (Street, city, state, and ZIP code) 109 Olding Road Bremerton, WA 98312	e. Employer Representative Michael Closser
	g. e-Mail
	h. Number of workers employed 125
i. Type of Establishment (factory, mine, wholesaler, etc.) direct service provider	j. Identify principal product or service direct service support
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (1)(A) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) On or about the dates of March 14, March 16, March 18, July 1, August 15, and August 20, in 2012, the above-named Employer (Employer) discriminatorily disciplined Lisa Hennings. Additionally, within the past 6 months, the Employer suspended Lisa Hennings without pay. The Employer took these adverse actions, as well as other adverse actions, against Lisa Hennings in retaliation for her union and/or protected concerted activities. Additionally, the Employer failed and/or refused to notify and/or provide the Charging Party with notice and/or an opportunity to bargain over the decision and/or the effects of the suspension, adverse actions, and/or discipline against Lisa Hennings.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Washington Federation of State Employees, Council 28, AFSCME, AFL-CIO	
4a. Address (Street and number, city, state, and ZIP code) 1212 Jefferson Street SE, STE 300 Olympia, WA 98501	4b. Tel. No.
	4c. Cell No. 360-349-7800
	4d. Fax No. 360-352-7608
	4e. e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) WFSE/AFSCME Council 28, AFL-CIO	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief. By  Tim Tharp, Journey Organizer (signature of representative or person making charge) (Print type name and title or office, if any)	Tel. No. same
	Office, if any, Cell No.
	Fax No.
	e-Mail same
Address same as above	(date) 1/30/13

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

GENERAL COUNSEL

EXHIBIT NO. 1(W)

JAN-30-2013 15:13

94%

P.02

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3612

DO NOT WRITE IN THIS SPACE

Case
19-CA-88938
Date Filed 9/10/2012
Amended: 2/07/20132nd. AMENDED
INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Kitsap Tenant Support Services	b. Tel. No. 360-373-4173
	c. Cell No.
	f. Fax No.
	g. e-Mail
	h. Number of workers employed 125
d. Address (Street, city, state, and ZIP code) 109 Olding Road Bremerton, WA 98312	e. Employer Representative Michael Closser
i. Type of Establishment (factory, mine, wholesaler, etc.) direct service provider	j. Identify principal product or service direct service support
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3) (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) On or about the dates of March 14, March 16, March 18, July 1, August 15, and August 20, in 2012, the above-named Employer (Employer) discriminatorily disciplined Lisa Hennings. Additionally, within the past 6 months, the Employer suspended Lisa Hennings without pay and then demoted her. The Employer took these adverse actions, as well as other adverse actions, against Lisa Hennings in retaliation for her union and/or protected concerted activities. Additionally, the Employer failed and/or refused to notify and/or provide the Charging Party with notice and/or an opportunity to bargain over the decision and/or the effects of the suspension, adverse actions, and/or discipline against Lisa Hennings.	
3. Full name of party filing charge (If labor organization, give full name, including local name and number) Washington Federation of State Employees, Council 28, AFSCME, AFL-CIO	
4a. Address (Street and number, city, state, and ZIP code) 1212 Jefferson Street SE, STE 300 Olympia, WA 98501	4b. Tel. No. 4c. Cell No. 360-348-7800 4d. Fax No. 360-352-7608 4e. e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) WFSE/AFSCME Council 28, AFL-CIO	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By (signature of representative or person making charge)	Tim Tharp, Journey Organizer (Print type name and title or office, if any)
Address: same as above	2/7/13 (date)
Tel. No. same Office, if any, Cell No. Fax No. e-Mail same	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

GENERAL COUNSEL

EXHIBIT NO. 147

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 19**

KITSAP TENANT SUPPORT SERVICES, INC.

and

WASHINGTON FEDERATION OF STATE
EMPLOYEES, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL 28, AFL-CIO

Cases	19-CA-74715
	19-CA-79006
	19-CA-82869
	19-CA-86006
	19-CA-88935
	19-CA-88938
	19-CA-90108

**ORDER FURTHER CONSOLIDATING CASES, AMENDED CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

An Order Consolidating Cases, Consolidated Complaint and Notice of Hearing previously issued on June 22, 2012, upon charges filed by Washington Federation of State Employees, American Federation of State, County and Municipal Employees, Council 28, AFL-CIO the ("Union"), in Cases 19-CA-74715 and 19-CA-79006 alleging that Kitsap Tenant Support Services, Inc. ("Respondent"), has been engaging in unfair labor practices as set forth in the National Labor Relations Act (the "Act"), 29 U.S.C. § 151, *et seq.*

The Union has charged that Respondent, in Cases 19-CA-82869; 19-CA-86006; 19-CA-88938; 19-CA-88935; 19-CA-90108 has been engaging in further unfair labor practices as set forth and defined in the Act. Based thereon, and in order to avoid unnecessary costs or delay, the Acting General Counsel, by the undersigned, pursuant to §102.33 of the Rules and Regulations of the National Labor Relations Board ("the Board"), ORDERS that these cases are consolidated.

GENERAL COUNSEL
EXHIBIT NO. 1(VV)

These cases having been consolidated, the Acting General Counsel, by the undersigned, pursuant to §10(b) of the Act and §102.15 of the Board's Rules and Regulations, issues the Order Further Consolidating Cases, Amended Consolidated Complaint and Notice of Hearing and alleges as follows:

1.

(a) The charge in Case 19-CA-74715 was filed by the Union on February 15, 2012, and a copy was served by regular mail on Respondent on or about February 16, 2012.

(b) The charge in Case 19-CA-79006 was filed by the Union on April 17, 2012, and a copy was served by regular mail on Respondent on or about that date.

(c) The charge in Case 19-CA-82869 was filed by the Union on June 11, 2012, and a copy was served by regular mail on Respondent on or about that date.

(d) The amended charge in Case 19-CA-82869 was filed by the Union on July 25, 2012, and a copy was served by regular mail on Respondent on or about that date.

(e) The second amended charge in Case 19-CA-82869 was filed by the Union on December 7, 2012, and a copy was served on Respondent by regular mail on or about that date.

(f) The third amended charge in Case 19-CA-82869 was filed by the Union on January 30, 2013, and a copy was served on Respondent by regular mail on or about that date.

(g) The charge in Case 19-CA-86006 was filed by the Union on July 25, 2012, and a copy was served by regular mail on Respondent on or about that date.

(h) The charge in Case 19-CA-88935 was filed by the Union on September 10, 2012, and a copy was served on Respondent by regular mail on or about that date.

(i) The amended charge in Case 19-CA-88935 was filed by the Union on October 1, 2012, and a copy was served on Respondent by regular mail on or about that date.

(j) The second amended charge in Case 19-CA-88935 was filed by the Union on January 10, 2013, and a copy was served on Respondent by regular mail on or about that date.

(k) The charge in Case 19-CA-88938 was filed by the Union on September 10, 2012, and a copy was served on Respondent by regular mail on or about that date.

(l) The charge in Case 19-CA-90108 was filed by the Union on September 26, 2012, and a copy was served on Respondent by regular mail on or about that date.

(m) The amended charge in Case 19-CA-90108 was filed by the Union on January 10, 2013, and a copy was served on Respondent by regular mail on or about that date.

2.

(a) At all material times, Respondent has been a State of Washington Corporation with an office and place of business in Bremerton, Washington ("Respondent's facility"), engaged in the business of providing residential support services.

(b) Respondent, during the past 12 months, which period is representative of all times material, in conducting its business operations described above in paragraph 2(a), had gross revenues valued in excess of \$250,000.

(c) During the same period, Respondent performed services valued in excess of \$50,000 for the State of Washington, an enterprise directly engaged in interstate commerce.

(d) At all material times Respondent has been engaged in commerce within the meaning of §§ 2(2), (6), and (7) of the Act.

3.

The Union is, and has been at all material times, a labor organization within the meaning of § 2(5) of the Act.

4.

At all material times Alan Frey has held the position of Program Manager, and has been a supervisor within the meaning of § 2(11) of the Act and an agent of Respondent within the meaning of § 2(13) of the Act.

5.

(a) The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of § 9(b) of the Act ("the Unit"):

All full-time and regular part-time employees working for Respondent as Direct Service Staff (DSS) or Head of Households (HOHs) in Respondent's Intensive Tenant Support Program (ITS) and Direct Service (DSS) working in Respondent's Supported Living Lite Program (SL Lite Programs), including such programs in Respondent's d/b/a, Olympic Peninsula Supported Living (OPSL) operations, located in or about Kitsap County, Port Angeles, and Port Townsend, Washington; excluding employees working in the Homecare division, Head of Households (HOHs) and Direct Service Staff (DSS) working in the Community Protection Program (CP Program) because they are guards as defined by the Act, and all other guards and supervisors as defined by the Act.

(b) On March 23, 2012, the Union was certified as the exclusive collective-bargaining representative of the Unit.

(c) At all times since March 23, 2012, based on § 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6.

(a) Since on or about March 23, 2012, and continuing to date, Respondent has changed its past practice of not enforcing and/or not strictly enforcing its rules, policies, and/or procedures and has implemented a new practice of strictly enforcing those rules, policies and/or procedures.

(b) The subject set forth above in paragraph 6(a) relates to the wages, hours and other terms and conditions of employment of the Unit and is a mandatory subject for the purpose of collective bargaining.

(c) Respondent engaged in the conduct described above in paragraph 6(a) without prior notice to the Union and/or without affording the Union an opportunity to bargain with respect to this conduct and/or the effects of this conduct.

(d) Respondent engaged in the conduct described above in paragraph 6(a) because its employees assisted the Union and/or engaged in protected concerted activities, and to discourage employees from engaging in these or other Union and/or protected, concerted activities.

7.

(a) About December 7, 2011, Respondent discharged its employee Bonnie Minor;

(b) About December 22, 2011, Respondent suspended its employee Alicia Sale;

(c) About December 22, 2011, Respondent suspended its employee Hannah Gates;

(d) About February 1, 2012, Respondent discharged its employee Alicia Sale;

(e) About February 1, 2012, Respondent discharged its employee Hannah Gates; and

(f) About February 15, 2012, Respondent suspended its employee Terry Owens.

(g) Respondent engaged in the conduct described above in paragraphs 7(a)-(f) because the named employees assisted the Union and/or engaged in protected, concerted activities, and/or to discourage employees from engaging in these or other protected, concerted activities.

8.

(a) About the dates set forth opposite their names, Respondent disciplined its employees named below:

Lisa Hennings	March 14, 16, and 18, and July 1, and August 15, and August 20, 2012.
---------------	---

Lenora Jones	May 8, and July 24, and August 7, 2012.
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Johnnie Driskell	June 6, 2012.
------------------	---------------

(b) About June 8, 2012, Respondent placed its employee Gary Martell on administrative leave;

(c) About June 22, 2012, Respondent issued to its employee Johnnie Driskell a letter of direction;

(d) About July 19, 2012, Respondent discharged its employee Gary Martell;

(e) About July 19, 2012, Respondent issued a write-up to its employee Johnnie Driskell;

(f) About July 23, 2012, Respondent placed its employee Johnnie Driskell on administrative leave;

(g) About September 1, 2012, Respondent discharged its employee Johnnie Driskell;

(h) About September 28, 2012, Respondent placed its employee Lenora Jones on administrative leave; and

(i) About October 9, 2012, Respondent demoted its employee Lenora Jones.

(j) Respondent engaged in the conduct described above in paragraphs 8(a)-(i) because the named employees assisted the Union and/or engaged in protected, concerted activities, and to discourage employees from engaging in these and/or other protected, concerted activities.

9.

Respondent, by Frey:

(a) About December 16, 2011, by telephone, made coercive statements to an employee about that employee's union membership, activities, and sympathies, and the union membership, activities, and sympathies of other employees;

(b) About December 19, 2011, at Respondent's facility, made coercive statements to an employee about that employee's union membership, activities, and sympathies, and the union membership, activities, and sympathies of other employees; and

(c) About December 19, 2011, at Respondent's facility, threatened its employees with unspecified reprisals because of their support of the Union.

10.

At all material times, Respondent has maintained the following overly broad rules:

- (i) Professional Standards: In the course of your work, you may have occasion to learn of matters which are confidential. It is your ethical obligation to consider all information about residents, clients, their families, and fellow employees, as privileged. You are expected to keep this knowledge in strict confidence. Never discuss any facet of Kitsap Tenant Support Services Inc. or its programs either in or outside of your work site where they can be overheard by unauthorized people. To protect yourself from accidental infringement of this policy, please refer all matters to your Coordinator.
- (ii) Professional Boundaries: When an employee is no longer employed by KTSS Inc., they are required to sign a confidentiality agreement stating they have not and will not reveal Client information or confidential matters learned while in the employ of the agency. Further, the employee must certify they have not, nor in any way been party to or knowingly permitted:
 - Disclosure of any confidential matters or trade secrets of Kitsap Tenant Support Services Inc.
 - Retention or duplication of any confidential materials or documents issued to or used by the employee during employment.
- (iii) Employee Professional Relationships: You understand that you are not allowed to discuss any issues related to your job performance or relationships with co-workers or supervisors, with Clients or within earshot of Clients.
- (iv) Canvassing or Soliciting: Staff members are expected to keep such activities from occurring on our premises and work sites. Employees are not allowed to sell, push products, or philosophy, religion to Clients or staff.
- (v) Conditions of Employment: Employee agree not to divulge, publish, or otherwise make known to authorized persons or to the public, any information obtained in the course of providing services, where release of such information may possibly make the person or persons whom are receiving such services, supervisors, Clients'

families and/or fellow Caregivers identifiable. Employees should recognize that unauthorized release of confidential information might subject them to civil liability under the provisions of State law and/or dismissal from KTSS Inc.

(vi) Reasons for Termination:

- Violation of Client and/or program confidentiality.
- Violation of policy and procedures of company.
- Misconduct as defined in the orientation manual.
- Failure to follow the Employee Professional Relationships Contract.
- Failure to sign and follow the Maintaining Client Confidentiality.

(vii) Misconduct: Giving Client information or opinions of the inner workings of the office (similar to rules previously mentioned).

11.

By the conduct described above in paragraph 6, Respondent has been failing and refusing to bargain collectively with the exclusive bargaining representative of its Unit employees in violation of §§ 8(a)(5) and (1) of the Act.

12.

By the conduct described in paragraphs 6, 7, and 8, Respondent has been discriminating in regard to the hire, tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of §§ 8(a)(3) and (1) of the Act.

13.

By the conduct described above in paragraphs 9 and 10, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in § 7 of the Act in violation of § 8(a)(1) of the Act.

14.

The unfair labor practices of Respondent described above affect commerce within the meaning of §§2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the Acting General Counsel seeks an Order requiring Respondent to copy and mail, at its own expense, a copy of the Notice to all current and former employees who were employed at any time since December 1, 2011.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 7 and 8, the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination.

WHEREFORE, the Acting General Counsel further seeks, as part of the remedy for the allegations in paragraphs 7 and 8, that Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods. The Acting General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to §§ 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Consolidated Complaint. The answer must be **received by this office on or before March 14, 2013, or postmarked on or before March 13, 2013**. Unless filed electronically in a pdf format,

Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

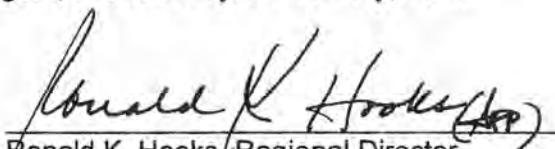
An answer may also be filed electronically by using the E-Filing system on the Agency's website. To file an Answer electronically, go to www.nlr.gov and select the "File Case Documents" option. Then click on the E-file tab and follow the instructions presented. Guidance for E-filing is contained in the attachment supplied with the Regional office's original correspondence in this matter, and is also available on www.nlr.gov under the E-file tab. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See § 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf document containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of § 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the Consolidated Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on the 28th day of May, 2013, in the James C. Sand Hearing Room, 29th Floor, Jackson Federal Building, 915 Second Avenue, Seattle, Washington, and continuing on consecutive days thereafter until concluded, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Consolidated Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Seattle, Washington, this 28th day of February, 2013.


Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174-1078

Form NLRB-4668
(4-90, Rev. R19 6-98)

(C CASES)

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, D.C.; San Francisco, California; New York, New York; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs or arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

Form NLRB-4668 Continued

Any party shall be entitled, on request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, D.C. (or, in cases under the San Francisco, California branch office, the Deputy Chief Administrative Law Judge; or in cases under the branch offices in New York, New York, and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge, Deputy Chief Administrative Law Judge, or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All brief or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce Government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

Form NLRB-4338 (6/90)
(R19 - 3/94)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

sap Tenant Support Services, Inc.

February 28, 2013

Cases: 19-CA-74715
19-CA-79006
19-CA-82869
19-CA-86006
19-CA-88935
19-CA-88938
19-CA-90108

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 C.F.R. 102.16(a) or with the Division of Judges when appropriate under 29 C.F.R. 102.16(b).
- (2) Grounds must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

CERTIFIED MAIL NO.
7010 1870 0002 5588 2936

ALAN FREY
KITSAP TENANT SUPPORT SERVICES,
INC.
109 OLDING RD
BREMERTON, WA 98312-1806

REGULAR MAIL

TIM THARP, ORGANIZER
WFSE COUNCIL 28/AFSCME
1212 JEFFERSON ST SE STE 300
OLYMPIA, WA 98501-2332

REGULAR MAIL

GARY E. LOFLAND, ATTORNEY
LOFLAND & ASSOCIATES
PO BOX 22550
YAKIMA, WA 98907-2550

INTERNET
FORM NLRB-501
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case

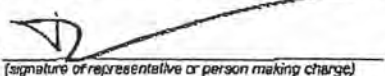
19-CA-99659

Date Filed

3/04/2013

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Kitsap Tenant Support Services	b. Tel. No. 360-373-4173
	c. Cell No.
	f. Fax No.
d. Address (Street, city, state, and ZIP code) 109 Olding Road Bremerton, WA 98312	g. e-Mail
e. Employer Representative Michael Closser	h. Number of workers employed 125
i. Type of Establishment (factory, mine, wholesaler, etc.) direct service provider	j. Identify principal product or service direct service support
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3) (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Within the past 6 months, the Employer disciplined, suspended without pay and then demoted Lisa Hennings. The Employer took these adverse actions, as well as other adverse actions, against Lisa Hennings in retaliation for her union and/or protected concerted activities. Additionally, the Employer failed and/or refused to notify and/or provide the Charging Party with notice and/or an opportunity to bargain over the decision and/or the effects of the suspension, adverse actions, and/or discipline against Lisa Hennings.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Washington Federation of State Employees, Council 28, AFSCME, AFL-CIO	
4a. Address (Street and number, city, state, and ZIP code) 1212 Jefferson Street SE, STE 300 Olympia, WA 98501	4b. Tel. No. 4c. Cell No. 360-349-7800 4d. Fax No. 360-352-7608 4e. e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) WFSE/AFSCME Council 28, AFL-CIO	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief. By  Tim Tharp, Journey Organizer (signature of representative or person making charge) (Print type name and title or office, if any) Address same as above 3/4/13 (date)	Tel. No. same Office, if any, Cell No. Fax No. e-Mail same

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

206-220-6305

GENERAL COUNSEL

EXHIBIT NO. 1699

MAR-04-2013 15:29

94%

P.01

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 19**

KITSAP TENANT SUPPORT SERVICES, INC.

and

WASHINGTON FEDERATION OF STATE
EMPLOYEES, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL 28, AFL-CIO

Cases	19-CA-74715
	19-CA-79006
	19-CA-82869
	19-CA-86006
	19-CA-88935
	19-CA-88938
	19-CA-90108
	19-CA-96118
	19-CA-99659

**ORDER FURTHER CONSOLIDATING CASES, SECOND AMENDED
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

An Order Further Consolidating Cases, Amended Consolidated Complaint and Notice of Hearing previously issued on February 28, 2013, upon charges filed by Washington Federation of State Employees, American Federation of State, County and Municipal Employees, Council 28, AFL-CIO the ("Union"), in Cases 19-CA-74715, 19-CA-79006, 19-CA-82869, 19-CA-86006, 19-CA-88935, 19-CA-88938, and 19-CA-90108 alleging that Kitsap Tenant Support Services, Inc. ("Respondent"), has been engaging in unfair labor practices as set forth in the National Labor Relations Act (the "Act"), 29 U.S.C. § 151, *et seq.*

The Union has charged that Respondent, in Cases 19-CA-96118, and 19-CA-99659, has been engaging in further unfair labor practices as set forth and defined in the Act. Based thereon, and in order to avoid unnecessary costs or delay, the Acting General Counsel, by the undersigned, pursuant to §102.33 of the Rules and

GENERAL COUNSEL
EXHIBIT NO. 1(yy)

Regulations of the National Labor Relations Board ("the Board"), ORDERS that all the aforementioned cases are consolidated.

These cases having been consolidated, the Acting General Counsel, by the undersigned, pursuant to §10(b) of the Act and §102.15 of the Board's Rules and Regulations, issues this Order Further Consolidating Cases, Second Amended Consolidated Complaint and Notice of Hearing and alleges as follows:

1.

(a) The charge in Case 19-CA-74715 was filed by the Union on February 15, 2012, and a copy was served by regular mail on Respondent on or about February 16, 2012.

(b) The charge in Case 19-CA-79006 was filed by the Union on April 17, 2012, and a copy was served by regular mail on Respondent on or about that date.

(c) The charge in Case 19-CA-82869 was filed by the Union on June 11, 2012, and a copy was served by regular mail on Respondent on or about that date.

(d) The amended charge in Case 19-CA-82869 was filed by the Union on July 25, 2012, and a copy was served by regular mail on Respondent on or about that date.

(e) The second amended charge in Case 19-CA-82869 was filed by the Union on December 7, 2012, and a copy was served on Respondent by regular mail on or about that date.

(f) The third amended charge in Case 19-CA-82869 was filed by the Union on January 30, 2013, and a copy was served on Respondent by regular mail on or about that date.

(g) The charge in Case 19-CA-86006 was filed by the Union on July 25, 2012, and a copy was served by regular mail on Respondent on or about that date.

(h) The charge in Case 19-CA-88935 was filed by the Union on September 10, 2012, and a copy was served on Respondent by regular mail on or about that date.

(i) The amended charge in Case 19-CA-88935 was filed by the Union on October 1, 2012, and a copy was served on Respondent by regular mail on or about that date.

(j) The second amended charge in Case 19-CA-88935 was filed by the Union on January 10, 2013, and a copy was served on Respondent by regular mail on or about that date.

(k) The charge in Case 19-CA-88938 was filed by the Union on September 10, 2012, and a copy was served on Respondent by regular mail on or about that date.

(l) The charge in Case 19-CA-90108 was filed by the Union on September 26, 2012, and a copy was served on Respondent by regular mail on or about that date.

(m) The amended charge in Case 19-CA-90108 was filed by the Union on January 10, 2013, and a copy was served on Respondent by regular mail on or about that date.

(n) The charge in Case 19-CA-96118 was filed by the Union on January 10, 2013, and a copy was served on Respondent by regular mail on or about that date.

(o) The charge in Case 19-CA-99659 was filed by the Union on March 4, 2013, and a copy was served on Respondent by regular mail on or about March 5, 2013.

2.

(a) At all material times, Respondent has been a State of Washington Corporation with an office and place of business in Bremerton, Washington ("Respondent's facility"), engaged in the business of providing residential support services.

(b) Respondent, during the past 12 months, which period is representative of all times material, in conducting its business operations described above in paragraph 2(a), had gross revenues valued in excess of \$250,000.

(c) During the same period, Respondent performed services valued in excess of \$50,000 for the State of Washington, an enterprise directly engaged in interstate commerce.

(d) At all material times Respondent has been engaged in commerce within the meaning of §§ 2(2), (6), and (7) of the Act.

3.

The Union is, and has been at all material times, a labor organization within the meaning of § 2(5) of the Act.

4.

(a) At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of § 2(11) of the Act and agents of Respondent within the meaning of § 2(13) of the Act:

M.E. Closser	Chief Executive Officer
Alan Frey	Program Manager
Kathy Grice	Human Resource Specialist
Meike Gergely	ITS Program Coordinator

(b) At all material times the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of § 2(13) of the Act:

Gary Lofland	Lead Negotiator
Pat O'Meara	Consultant

5.

(a) The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of § 9(b) of the Act (the "Unit"):

All full-time and regular part-time employees working for Respondent as Direct Service Staff (DSS) or Head of Households (HOHs) in Respondent's Intensive Tenant Support Program (ITS) and Direct Service

(DSS) working in Respondent's Supported Living Lite Program (SL Lite Programs), including such programs in Respondent's d/b/a, Olympic Peninsula Supported Living (OPSL) operations, located in or about Kitsap County, Port Angeles, and Port Townsend, Washington; excluding employees working in the Homecare division, Head of Households (HOHs) and Direct Service Staff (DSS) working in the Community Protection Program (CP Program) because they are guards as defined by the Act, and all other guards and supervisors as defined by the Act.

(b) On March 23, 2012, the Union was certified as the exclusive collective-bargaining representative of the Unit.

(c) At all times since March 23, 2012, based on § 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6.

(a) Since on or about March 23, 2012, and continuing to date, Respondent has changed its past practice of not enforcing and/or not strictly enforcing its rules, policies, and/or procedures and has implemented a new practice of strictly enforcing those rules, policies and/or procedures.

(b) On or about February 4, 2013, Respondent suspended its employee Lisa Hennings.

(c) On or about February 11, 2013, Respondent demoted its employee Lisa Hennings.

(d) The subjects set forth above in paragraphs 6(a)-(c) relate to the wages, hours and other terms and conditions of employment of the Unit and are a mandatory subject for the purpose of collective bargaining.

(e) Respondent engaged in the conduct described above in paragraphs 6(a)-(c) without prior notice to the Union and/or without affording the Union an opportunity to bargain with respect to this conduct and/or the effects of this conduct.

(f) Respondent engaged in the conduct described above in paragraphs 6(a)-(c) because its employees assisted the Union and/or engaged in protected concerted activities, and to discourage employees from engaging in these or other Union and/or protected, concerted activities.

7.

(a) At various times from about June through December 2012, Respondent and the Union met for the purposes of negotiating an initial collective bargaining agreement with respect to the wages, hours, and other terms and conditions of employment of the Unit.

(b) From June through December 2012, Respondent failed and refused to meet with the Union at reasonable times, and systematically delayed the bargaining process, by:

- i. On June 1, 2012, refusing to meet on June 5, 2012, as it previously proposed and had been accepted by the Union, and offering no future date;
- ii. On June 8, 2012, stating that it was not available to meet for the first time until July 13, 2012, over five weeks from the previously agreed upon June 5 date, nearly two months later than Union's proposed initial meeting date, and four months after certification;
- iii. On June 8, 2012, stating it would not agree to future dates until the first meeting;

- iv. On July 13, 2012, declaring it was unavailable for all of September and agreeing to meet on only two dates (August 6 and 15);
- v. On August 13, 2012, cancelling the August 15 bargaining session;
- vi. On October 16, 2012, and October 22, 2012, informing the Union it could not meet at all in November because of an NLRB Hearing, and refusing to schedule future dates;
- vii. Failing to meet from October 16, 2012, through November 26, 2012;
- viii. On December 17, 2012, cancelling the bargaining session scheduled for December 18, 2012; and
- ix. Failing to schedule bargaining dates after December 18, 2012, despite repeated requests from Union.

(c) From June through December 2012, Respondent failed and refused to provide and/or delayed in providing the Union with the following relevant information:

- i. On June 5, 2012, information regarding the "Board" that it claims must approve all agreements;
- ii. On August 6, 2012, at the bargaining table, failed to define what it means by "red circled" in its proposal for night shift wages;
- iii. On August 13, 2012, providing its reasons for the cancellation of the August 15, 2012, meeting;
- iv. Delay in providing the information requested on May 22, 2012, for at least eight weeks;
- v. Information requested on October 29, 2012, regarding the money spent on Unit wages;
- vi. Delay in providing the information requested on July 17, 2012, regarding Head of Households until October 12, 2012;

- vii. Delay in providing the information requested in letters dated May 22, 2012, and July 17, 2012, regarding vacation rates; and
- viii. On November 20, 2012, refused to provide information requested on October 29 as it relates to compensation for bargaining unit employees.

(d) From June through December 2012, Respondent put forth proposals and/or took positions in bargaining repugnant to the Union by:

- i. On August 6, 2012, proposing to "red circle" night shift wages;
- ii. On September 17 and October 16, 2012, refusing to consider the Union's proposal on seniority;
- iii. On November 26, 2012, declaring it would not agree to arbitration or consider discipline;
- iv. On November 26, 2012, refusing to consider raising wages or mileage rate proposals; and
- v. On October 16, 2012, declaring "we are not going to bargain with you over how we allocate money."

(e) From June through December 2012, Respondent ended bargaining sessions early by:

- i. On August 6, 2012, at 1:30 pm declaring, "we are done here" when parties had agreed to bargain from 9:00 am to 5:00 pm; and
- ii. On September 17, 2012, ending the meeting at 11:40 am.

(f) On about September 6, 2012, Respondent insisted to impasse, as a condition of reaching any collective-bargaining agreement, that it would only bargain to eliminate the Head of Household (HOH) position and continue to post for HOH positions until "we reach impasse and impose our offer."

(g) On about October 16, 2012, by Alan Frey at Respondent's facility, threatened its employees by stating "you want more write-ups, you will starting now."

(h) By its overall conduct, including the conduct described above in paragraphs 7(b) through (g) inclusive, Respondent has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the Unit.

8.

(a) About the dates set forth opposite their names, Respondent discharged its employees named below:

Bonnie Minor	December 7, 2011
Alicia Sale	February 1, 2012
Hannah Gates	February 1, 2012
Terry Owens	March 28, 2012
Gary Martell	July 19, 2012
Johnnie Driskell	September 1, 2012

(b) About the dates set forth opposite their names, Respondent suspended its employees named below:

Alicia Sale	December 22, 2011
Hannah Gates	December 22, 2011
Terry Owens	February 15, 2012

(c) About the dates set forth opposite their names, Respondent disciplined its employees named below:

Lisa Hennings	March 14, 16, and 18, July 1, August 15, and August 20, 2012
Lenora Jones	May 8, and July 24, and August 7, 2012
Johnnie Driskell	June 6, 2012

(d) About the dates set forth opposite their names, Respondent placed on administrative leave its employees named below:

Gary Martell	June 8, 2012
Johnnie Driskell	July 23, 1012
Lenora Jones	September 28, 2012

(e) About June 22, 2012, Respondent issued a letter of direction to its employee Johnnie Driskell.

(f) About July 19, 2012, Respondent issued a write-up to its employee Johnnie Driskell.

(g) About October 9, 2012, Respondent demoted its employee Lenora Jones.

(h) Respondent engaged in the conduct described above in paragraphs 8(a)-(g) because the named employees assisted the Union and/or engaged in protected, concerted activities, and/or to discourage employees from engaging in these or other protected, concerted activities.

9.

Respondent, by Frey:

(a) About December 16, 2011, by telephone, made coercive statements to an employee about that employee's union membership, activities, and sympathies, and the union membership, activities, and sympathies of other employees;

(b) About December 19, 2011, at Respondent's facility, made coercive statements to an employee about that employee's union membership, activities, and sympathies, and the union membership, activities, and sympathies of other employees; and

(c) About December 19, 2011, at Respondent's facility, threatened its employees with unspecified reprisals because of their support of the Union.

10.

At all material times, Respondent has maintained the following rules:

- (a) Professional Standards: In the course of your work, you may have occasion to learn of matters which are confidential. It is your ethical obligation to consider all information about residents, clients, their families, and fellow employees, as privileged. You are expected to keep this knowledge in strict confidence. Never discuss any facet of Kitsap Tenant Support Services Inc. or its programs either in or outside of your work site where they can be overheard by unauthorized people. To protect yourself from accidental infringement of this policy, please refer all matters to your Coordinator.
- (b) Professional Boundaries: When an employee is no longer employed by KTSS Inc., they are required to sign a confidentiality agreement stating they have not and will not reveal Client information or confidential matters learned while in the employ of the agency. Further, the employee must certify they have not, nor in any way been party to or knowingly permitted:

- Disclosure of any confidential matters or trade secrets of Kitsap Tenant Support Services Inc.
 - Retention or duplication of any confidential materials or documents issued to or used by the employee during employment.
- (c) Employee Professional Relationships: You understand that you are not allowed to discuss any issues related to your job performance or relationships with co-workers or supervisors, with Clients or within earshot of Clients.
- (d) Canvassing or Soliciting: Staff members are expected to keep such activities from occurring on our premises and work sites. Employees are not allowed to sell, push products, or philosophy, religion to Clients or staff.
- (e) Conditions of Employment: Employee agree not to divulge, publish, or otherwise make known to authorized persons or to the public, any information obtained in the course of providing services, where release of such information may possibly make the person or persons whom are receiving such services, supervisors, Clients' families and/or fellow Caregivers identifiable. Employees should recognize that unauthorized release of confidential information might subject them to civil liability under the provisions of State law and/or dismissal from KTSS Inc.
- (f) Reasons for Termination:
- Violation of Client and/or program confidentiality.
 - Violation of policy and procedures of company.
 - Misconduct as defined in the orientation manual.
 - Failure to follow the Employee Professional Relationships Contract.
 - Failure to sign and follow the Maintaining Client Confidentiality.
- (g) Misconduct: Giving Client information or opinions of the inner workings of the office (similar to rules previously mentioned).

11.

By the conduct described above in paragraphs 6 and 7, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive bargaining representative of its Unit employees in violation of §§ 8(a)(5) and (1) of the Act.

12.

By the conduct described in paragraphs 6 and 8, Respondent has been discriminating in regard to the hire, tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of §§ 8(a)(3) and (1) of the Act.

13.

By the conduct described above in paragraphs 9 and 10, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in § 7 of the Act in violation of § 8(a)(1) of the Act.

14.

The unfair labor practices of Respondent described above affect commerce within the meaning of §§ 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the Acting General Counsel seeks an Order requiring that Respondent promptly have Closser, in the presence of a Board agent, read the Notice to employees on work time, and also mail, at its own expense, a copy of the Notice to all current and former employees who were employed at any time since December 1, 2011.

WHEREFORE, as part of the remedy for the unfair labor practice alleged above in paragraph 7, the Acting General Counsel seeks an Order requiring Respondent to: (1) bargain on request within 15 days of a Board Order; (2) bargain on request for a minimum of 15 hours a week until an agreement or lawful impasse is reached or until the parties agree to a respite in bargaining; (3) prepare written

bargaining progress reports every 15 days and submit them to the Regional Director and also serve the reports on the Union to provide the Union with an opportunity to reply; and (4) make whole employee negotiators for any earnings lost while attending bargaining sessions.

WHEREFORE, as part of the remedy for Respondent's unfair labor practice alleged above in paragraph 7, the Acting General Counsel seeks an Order requiring Respondent to bargain in good faith with the Union, on request, for the period required by *Mar-Jac Poultry Co*, 136 NLRB 785, 787 (1962), as the requested bargaining representative in the appropriate unit.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 6 and 8, the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination.

WHEREFORE, the Acting General Counsel further seeks, as part of the remedy for the allegations in paragraphs 6 and 8, that Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods. The Acting General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to §§ 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Second Amended Consolidated Complaint. The answer must be **received by this office on or**

before April 10, 2013, or postmarked on or before April 9, 2013. Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. To file an Answer electronically, go to www.nlr.gov and select the "File Case Documents" option. Then click on the E-file tab and follow the instructions presented. Guidance for E-filing is contained in the attachment supplied with the Regional office's original correspondence in this matter, and is also available on www.nlr.gov under the E-file tab. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See § 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf document containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional

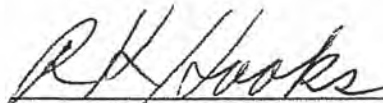
Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of § 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the Second Amended Consolidated Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on the 28th day of May, 2013, in the James C. Sand Hearing Room, 29th Floor, Jackson Federal Building, 915 Second Avenue, Seattle, Washington, and continuing on consecutive days thereafter until concluded, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Second Amended Consolidated Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Seattle, Washington, this 27th day of March, 2013.



Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174-1078

Form NLRB-4668
(4-90, Rev. R19 6-98)

(C CASES)

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, D.C.; San Francisco, California; New York, New York; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs or arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

Form NLRB-4668 Continued

Any party shall be entitled, on request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, D.C. (*or, in cases under the San Francisco, California branch office, the Deputy Chief Administrative Law Judge; or in cases under the branch offices in New York, New York, and Atlanta, Georgia, the Associate Chief Administrative Law Judge*) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge, Deputy Chief Administrative Law Judge, or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All brief or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce Government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

Form NLRB-4338 (6/90)
(R19 -- 3/94)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Kitsap Tenant Support Services, Inc.

March 27, 2013

Cases: 19-CA-74715
19-CA-79006
19-CA-82869
19-CA-86006
19-CA-88935
19-CA-88938
19-CA-90108
19-CA-96118
19-CA-99659

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 C.F.R. 102.16(a) or with the Division of Judges when appropriate under 29 C.F.R. 102.16(b).
- (2) Grounds must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

CERTIFIED MAIL NO.
7010 0780 0000 9860 0439

MICHAEL E. CLOSSER
KITSAP TENANT SUPPORT SERVICES, INC.
109 OLDING RD
BREMERTON, WA 98312-1806

REGULAR MAIL

TIM THARP, ORGANIZER
WFSE COUNCIL 28/AFSCME
1212 JEFFERSON ST SE STE 300
OLYMPIA, WA 98501-2332

REGULAR MAIL

GARY E. LOFLAND, ATTORNEY
LOFLAND & ASSOCIATES
PO BOX 22550
YAKIMA, WA 98907-2550

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 19**

KITSAP TENANT SUPPORT SERVICES, INC.

and

WASHINGTON FEDERATION OF STATE
EMPLOYEES, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL 28, AFL-CIO

Cases	19-CA-74715
	19-CA-79006
	19-CA-82869
	19-CA-86006
	19-CA-88935
	19-CA-88938
	19-CA-90108
	19-CA-96118
	19-CA-99659

AMENDMENT TO SECOND AMENDED CONSOLIDATED COMPLAINT

Pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, the Second Amended Consolidated Complaint issued in the above-captioned matter on March 27, 2013, is hereby amended as follows:

(1) The date in paragraph 7(c)(i) is changed from June 5, 2012, to May 22, 2012.

(2) Paragraph 7(c)(iv) is changed to read as follows: Failed to provide the following information requested on June 1, 2012: (a) a copy of the current employee schedule that includes house name and shift information; (b) any and all employee transfers, promotions, and movement in and out of the bargaining unit since December 11, 2011; (c) job descriptions and memos about job expectations; (d) all memos or written material on policies and procedures, rules and guidelines for employees working at KTSS; (e) history of wages and raises for employees (5 years); (f) information on

GENERAL COUNSEL
EXHIBIT NO. 1666

training programs and requirements for staff, including all training records for employees dating back to 12/1/11; and (g) Information on all payments received from the State.

(3) The date June 1, 2012, is added to paragraph 7(c)(vi).

(4) The current paragraph 7(c)(vii) is deleted.

(5) The current paragraph 7(c)(viii) is re-numbered as the new paragraph 7(c)(vii).

(6) Paragraph 7(d)(ii) is modified to read as follows: On August 6 and October 16, 2012, submitted written proposals on a broad management rights clause that reserved to Respondent the right to, among other things, discipline and discharge, promote, demote, set hours, subcontract unit work, and assign unit work to supervisors.

(7) A new paragraph 7(d)(iii) is added as follows: On August 6, and October 16, 2012, submitted written proposals on discipline that reserved to Respondent the right to decide when it is appropriate to apply progressive discipline.

(8) A new paragraph 7(d)(iv) is added as follows: On August 6, and October 16, 2012, submitted written proposals making employment at will.

(9) Current paragraphs 7(d)(iii)-(v) are re-numbered as paragraphs 7(d)(v)-(vii).

(10) Paragraph 7(e)(i) is changed to read: On July 13, 2012, ending the meeting at 11:53 am.

(11) The current paragraph 7(e)(i) is re-numbered as 7(e)(ii).

(12) The current paragraph 7(e)(ii) is re-numbered as 7(e)(iii).

training programs and requirements for staff, including all training records for employees dating back to 12/1/11; and (g) Information on all payments received from the State.

(3) The date June 1, 2012, is added to paragraph 7(c)(vi).

(4) The current paragraph 7(c)(vii) is deleted.

(5) The current paragraph 7(c)(viii) is re-numbered as the new paragraph 7(c)(vii).

(6) Paragraph 7(d)(ii) is modified to read as follows: On August 6 and October 16, 2012, submitted written proposals on a broad management rights clause that reserved to Respondent the right to, among other things, discipline and discharge, promote, demote, set hours, subcontract unit work, and assign unit work to supervisors.

(7) A new paragraph 7(d)(iii) is added as follows: On August 6, and October 16, 2012, submitted written proposals on discipline that reserved to Respondent the right to decide when it is appropriate to apply progressive discipline.

(8) A new paragraph 7(d)(iv) is added as follows: On August 6, and October 16, 2012, submitted written proposals making employment at will.

(9) Current paragraphs 7(d)(iii)-(v) are re-numbered as paragraphs 7(d)(v)-(vii).

(10) Paragraph 7(e)(i) is changed to read: On July 13, 2012, ending the meeting at 11:53 am.

(11) The current paragraph 7(e)(i) is re-numbered as 7(e)(ii).

(12) The current paragraph 7(e)(ii) is re-numbered as 7(e)(iii).

(13) Paragraph 7(f) is modified to read as follows: On about September 6, 2012, Respondent insisted as a condition of reaching any collective-bargaining agreement that it would only bargain to eliminate the head of Household (HOH) position and continue to post for HOH positions until "we reach impasse and impose our offer."

(14) A new paragraph 7(g) is added as follows: On October 16, 2012, Respondent put in writing the proposal described above in paragraph 7(f) stating that the HOH position would be eliminated and replaced by a supervisory position titled Household Manager (HM).

(15) A new paragraph 7(h) is added as follows: On November 26, 2012, the parties signed a tentative agreement containing a unit description which includes the HOH position.

(16) A new paragraph 7(i) is added as follows: On April 4, 2013, Respondent insisted that the Union eliminate the HOH position by converting it to an HM supervisory position.

Pursuant to §§ 102.20 and 102.21 of the Board's Rules and Regulations, Respondent shall file with the Regional Director, acting in this matter as agent of the Board, an original and four (4) copies of an Answer to this **Amendment to Second Amended Consolidated Complaint** on or before May 1, 2013, and that, unless it does so, all of the allegations in this Amendment shall be deemed to be admitted to be true and shall be so found by the Board. Respondent shall immediately upon the filing of said Answer, serve a copy of the answer on each of the other parties.

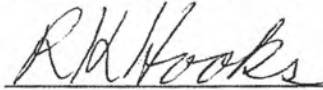
An answer may also be filed electronically by using the E-Filing system on the Agency's website. To file an Answer electronically, go to www.nlr.gov and select

the "File Case Documents" option. Then click on the E-file tab and follow the instructions presented. Guidance for E-filing is contained in the attachment supplied with the Regional office's original correspondence in this matter, and is also available on www.nlr.gov under the E-file tab. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See § 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf document containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of § 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is

filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in this Amendment are true.

DATED at Seattle, Washington, this 17th day of April, 2013.



Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174-1078

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

KITSAP TENANT SUPPORT SERVICES, INC.

and

WASHINGTON FEDERATION OF STATE
EMPLOYEES, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL 28, AFL-CIO

Cases 19-CA-074715
19-CA-079006
19-CA-082869
19-CA-086006
19-CA-088935
19-CA-088938
19-CA-090108
19-CA-096118
19-CA-099659

ORDER DENYING MOTION

The Respondent's motion to dismiss the second amended consolidated complaint is denied. The Respondent has failed to establish that it is entitled to judgment as a matter of law.¹

Dated, Washington, D.C., May 14, 2013.

MARK GASTON PEARCE,	CHAIRMAN
RICHARD F. GRIFFIN, JR.,	MEMBER
SHARON BLOCK,	MEMBER

¹ The Respondent contends that the Acting General Counsel does not validly hold that position, that the Board does not have a valid quorum under *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013), and that therefore the Board's appointment of the Regional Director for Region 19 was not valid. For the reasons stated in *Sub-Acute Rehabilitation Center at Kearney d/b/a Belgrove Post Acute Care Center*, 359 NLRB No. 77 (2013), and *Bloomington's, Inc.*, 359 NLRB No. 113 (2013), these arguments are rejected.

GENERAL COUNSEL
EXHIBIT NO. 16997

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

KITSAP TENANT SUPPORT SERVICES, INC.

and

WASHINGTON FEDERATION OF STATE
EMPLOYEES, AMERICAN FEDERATION
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL 28, AFL-CIO

Cases 19-CA-074715,
ET AL

DATE OF SERVICE May 14, 2013

AFFIDAVIT OF SERVICE OF BOARD ORDER DENYING MOTION

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) upon the persons at the addresses and in the manner indicated below. Persons listed below under "E-Service" have voluntarily consented to receive service electronically, and such service has been effected on the same date indicated above.

CERTIFIED & REGULAR MAIL

GARY E. LOFLAND, ATTORNEY
HALVERSON NORTHWEST LAW GROUP PC
PO BOX 22550
YAKIMA, WA 98907-2550

REGULAR MAIL

ALAN FREY
KITSAP TENANT SUPPORT SERVICES, INC.
109 OLDING RD
BREMERTON, WA 98312-1806

CERTIFIED & REGULAR MAIL

TIM THARP, ORGANIZER
WFSE COUNCIL 28/AFSCME
1212 JEFFERSON ST SE
SUITE 300
OLYMPIA, WA 98501-2332

E-SERVICE

REGION 19, ANCHORAGE, ALASKA
NATIONAL LABOR RELATIONS BOARD
605 W 4TH AVE
SUITE 210
ANCHORAGE, AK 99501-2252

Subscribed and sworn before me this
14TH day of May 2013.

DESIGNATED AGENT

BERTHA DINKINS

NATIONAL LABOR RELATIONS BOARD

JUDGE POLLACK

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

KITSAP TENANT SUPPORT SERVICES, INC.)	
	)	CASES: 19-CA-74715
Employer	)	19-CA-79006
	)	19-CA-82869
	)	19-CA-86006
and	)	19-CA-88935
	)	19-CA-88938
WASHINGTON FEDERATION OF STATE	)	19-CA-90108
EMPLOYEES, AMERICAN FEDERATION OF	)	19-CA-96118
STATE, COUNTY, AND MUNICIPAL	)	19-CA-99659
EMPLOYEES, COUNCIL 28, AFL-CIO)	
	)	EMPLOYER'S MOTION TO
Organization	)	DISMISS THE SECOND
	)	AMENDED CONSOLIDATED
	)	COMPLAINT

COMES NOW Kitsap Tenant Support Services, Inc. ("KTSS") and
pursuant to Rule 102.24(a) moves the Administrative Law Judge to dismiss the
Second Amended Consolidated Complaint. This Motion is based upon the
invalidity of the Complaint, as held in *Hooks v. Kitsap Tenant Support Services,*
Inc., No. C13-5470 BHS, 2013 WL 4094344 at *2 (W.D. Wash. Aug. 13, 2013).

MOTION TO DISMISS SECOND AMENDED CONSOLIDATED COMPLAINT -I

GENERAL COUNSEL

EXHIBIT NO. ELL

HALVERSON | NORTHWEST P.C.
405 East Lincoln Ave. | P.O. Box 22550
Yakima, WA 98907
509.248.6030

I. Facts

Mr. Hooks issued the Amended Consolidated Complaint in this case on February 28, 2013. Mr. Hooks subsequently issued a Second Amended Consolidated Complaint on March 27, 2013, which was then amended on April 17, 2013. On May 28, 2013, Mr. Hooks further amended the Complaint.

On June 13, 2013, Mr. Hooks filed a petition in the Federal District Court for the Western District of Washington seeking an injunction under Section 10(j) of the National Labor Relations Act ("NLRA").¹ *Hooks*, 2013 WL 4094344 at *1. Mr. Hooks' petition sought to enjoin KTSS from undertaking certain actions during the pendency of this administrative hearing.

District Judge Benjamin Settle granted KTSS's motion to dismiss Mr. Hooks' petition, holding that the complaints at issue in *this very administrative proceeding* were invalid: "Hooks was without power to file the complaints against Kitsap in the underlying administrative matter." *Id.* The court furthered that "[w]ithout a valid complaint, Hooks is precluded from filing a petition for preliminary relief." *Id.*

¹ 29 U.S.C. § 160(j).

1 The court reasoned that (1) the Board lacked the authority to issue the
2 complaints because it lacked a quorum at the time of their issuance; (2) Acting
3 General Counsel Lafe Solomon could not delegate his authority to issue the
4 complaints because AGC Solomon was not properly appointed under the Federal
5 Vacancies Reform Act ("FVRA")²; and (3) the penalty provisions of the FVRA
6 do not permit AGC Solomon to act pursuant to an improper appointment. *Id.* at
7 *1-2. The *Hooks* decision is attached hereto as **Attachment A**.

10 II. Issue

11 Whether the NLRB's Second Amended Consolidated Complaint must be
12 dismissed because (1) the Board lacked a quorum when the Complaint was
13 issued; (2) AGC Solomon was not lawfully in office when the Complaint was
14 issued; and (3) the Federal District Court for the Western District of Washington
15 has held that the complaints *in this very matter* are invalid as a matter of law?
16

17 III. Legal Authority

18 1. *The NLRB's Issuance Of The Complaint Was Ultra Vires Because The* 19 *Board Lacked A Quorum When The Complaint Was Issued.*

20 The NLRA provides that the Board must have at three least members to
21 achieve a quorum. 29 U.S.C. § 153(b). The Act requires that the Board quorum
22

23 ² 5 U.S.C. § 3345.

1 requirement must be satisfied "at all times." *New Process Steel v. NLRB*, 130
2 S.Ct. 2635, 2645 (2010). "It is undisputed that the Board must have a quorum of
3 three in order to take action." *Noel Canning v. NLRB*, 705 F.3d 490, 499 (D.C.
4 Cir. 2013). The Board is vested with the power to issue complaints or to
5 designate its agent to issue complaints. 29 U.S.C. § 160(b). The Board, however,
6 lacked a quorum when the complaints in the present proceeding were issued.
7
8 *Hooks*, 2013 WL 4094344 at *1. The present action, therefore, must be dismissed
9 because the Complaint was an *ultra vires* act and void as a nullity.

10
11 ***2. The NLRB's Issuance Of The Complaint Was Ultra Vires Because It Had***
12 ***No General Counsel When The Complaint Was Issued.***

13 The NLRA also states that the General Counsel is the only person with
14 general supervisory authority over the Board's attorneys and that the General
15 Counsel has ultimate authority regarding Board investigations as well as the
16 issuance and prosecution of complaints:
17

18 The General Counsel of the Board shall exercise general supervision
19 over all attorneys employed by the Board (other than administrative
20 law judges and legal assistants to Board members) and over the
21 officers and employees in the regional offices. He shall have final
22 authority, on behalf of the Board, in respect of the investigation of
23 charges and issuance of complaints under section 160 of this title, and
24 in respect of the prosecution of such complaints before the Board, and
25 shall have such other duties as the Board may prescribe or as may be
provided by law.

MOTION TO DISMISS SECOND AMENDED CONSOLIDATED COMPLAINT -4

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Yakima, WA 98907
509 248 6030

1 29 U.S.C. § 153(d).

2 AGC Solomon's appointment, however, was invalid because "[t]he
3 FVRA . . . only permits the appointment of a person under specific circumstances
4 and the only circumstance that could apply to [AGC Solomon] is appointing a
5 person who, within the last 365 days, has served as a personal assistant to the
6 departing officer. It is undisputed that Solomon has never served as a first
7 assistant." *Hooks*, 2013 WL 4094344 at *2 (citing 5 U.S.C. § 3345(b)).
8
9

10 The present action must be dismissed because the NLRB's issuance of the
11 Complaint was an *ultra vires* act. The NLRB had no authority to investigate
12 KTSS or issue the Complaint without a validly appointed General Counsel or
13 Acting General Counsel because the General Counsel has "final authority, on
14 behalf of the Board, in respect of the investigation of charges and issuance of
15 complaints" 29 U.S.C. § 153(d). Similarly, without a validly appointed
16 General Counsel, Mr. Hooks lacks the authority to prosecute this matter. 29
17 U.S.C. § 153(d).
18
19
20

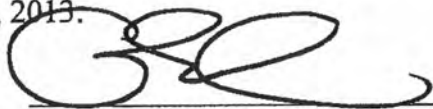
21 IV. Conclusion

22 WHEREFORE, Kitsap Tenant Support Services, Inc. prays the Regional
23 Director and General Counsel take nothing by the Complaint and that the
24 MOTION TO DISMISS SECOND AMENDED CONSOLIDATED COMPLAINT -5
25

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1 Complaint be dismissed in its entirety and Kitsap Tenant Support Services, Inc.
2 be awarded all fees, costs, and disbursements incurred herein.
3

4 Dated this 30th day of August, 2013.
5



6 GARY E. LOFLAND, WSBA # 12150
7 Counsel for Kitsap Tenant Support
8 Services, Inc.
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MOTION TO DISMISS SECOND AMENDED CONSOLIDATED COMPLAINT -6

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Yakima, WA 98907
509 248 8030

ATTACHMENT A

Hooks v. Kitsap Tenant Support Services, Inc., Slip Copy (2013)

2013 WL 4094344

Only the Westlaw citation is currently available.
United States District Court, W.D. Washington,
at Tacoma.

Ronald K. HOOKS, Regional Director of the Nineteenth Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board, Petitioner,

v.

KITSAP TENANT SUPPORT SERVICES, INC., Respondent.

No. C13-5470 BHS. | Aug. 13, 2013.

Attorneys and Law Firms

Elizabeth Devleming, Richard Fiol, Anne Phyllis Pomerantz, National Labor Relations Board, Seattle, WA, for Petitioner.

Gary E. Lofland, Yakima, WA, for Respondent.

Opinion

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

BENJAMIN H. SETTLE, District Judge.

*1 This matter comes before the Court on Respondent Kitsap Tenant Support Services, Inc.'s ("Kitsap") motion to dismiss (Dkt. 12). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

I. PROCEDURAL HISTORY

On June 13, 2013, Petitioner Ronald K. Hooks ("Hooks"), Regional Director for Region 19 of the National Labor Relations Board (the "Board"), filed a petition for preliminary injunctive relief pursuant to § 10(j) of the National Labor Relations Act. Dkt. 1.

On July 18, 2013, Kitsap filed a motion to dismiss. Dkt. 12. On August 5, 2013, the Board responded. Dkt. 14. On August 9, 2013, Kitsap responded. Dkt. 41.

II. FACTUAL BACKGROUND

The Board consists of five members who are appointed for five-year terms by the President with the advice and consent of the Senate. 29 U.S.C. § 153(a).

On January 4, 2013, President Obama appointed members Terence Flynn, Shannon Block ("Block") and Richard Griffin, Jr. ("Griffin") to the Board. Although the Senate was in session that day, President Obama chose not to nominate these individuals for confirmation by the Senate.

Hooks v. Kitsap Tenant Support Services, Inc., Slip Copy (2013)

On February 28, 2013, Hooks issued an Amended Consolidated Complaint in the underlying administrative action. On March 27, 2013, Hooks subsequently issued a Second Amended Consolidated Complaint, which was then amended on April 16, 2013. On May 28, 2013, Hooks again amended the Complaint.

On July 16, 2013, the President submitted new nominations to the Board. On July 30, 2013, the Senate confirmed all five positions on the Board.

III. DISCUSSION

The Recess Appointment clause provides that the President “shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.” U.S. Const. art. II, § 2, cl.3.

In this case, Kitsap contends that the Board is without power to act because it lacks a properly appointed quorum. Kitsap has provided numerous recent cases for the proposition that “Recess” means the period of time between an adjournment *sine die* and the start of the Senate’s next session. *See* Dkt. 41 at 2–3 (listing cases). While none of these cases are binding, the Court has reviewed each case and finds the legal analysis persuasive. There is no need to add to what is thoroughly explained in *N.L.R.B. v. Enterprise Leasing Co. Southeast, LLC*, — F.3d —, 2013 WL 3722388 (4th Cir.2013), and *N.L.R.B. v. New Vista Nursing and Rehabilitation*, 719 F.3d 203 (3rd Cir.2013). Therefore, the Court adopts the reasoning in these cases and holds that “Recess” in the Recess Appointment Clause means the period of time between an adjournment *sine die* and the start of the Senate’s next session.

As applied to the facts of this case, Hooks was without power to file the complaints against Kitsap in the underlying administrative matter. A petition for injunctive relief brought under Section 10(j) may be brought only “upon issuance of a complaint as provided in [29 U.S.C. § 160(b)].” 29 U.S.C. § 160(j). Without a valid complaint, Hooks is precluded from filing a petition for preliminary relief. Therefore, the Court grants Kitsap’s motion to dismiss on this issue.

*2 Hooks contends that, even if the Board lacks authorization, the actions of the Acting General Counsel Lafe E. Solomon (“Solomon”), including his delegation of authority to initiate legal action to Hooks, are still valid. First, Hooks asserts that President Obama validly appointed Solomon pursuant to the Federal Vacancies Reform Act (“FVRA”), 5 U.S.C. § 3345, *et seq.* Dkt. 13 at 14–21. The FVRA, however, only permits the appointment of a person under specific circumstances and the only circumstance that could apply to Hooks is appointing a person who, within the last 365 days, has served as a personal assistant to the departing officer. *Id.* § 3345(b). It is undisputed that Solomon has never served as a first assistant. Therefore, Hooks’s argument is without merit.

Second, Hooks contends that the actions of Solomon are exempted from the penalty provisions of the FVRA and are, therefore, valid. Dkt. 13 at 17. Hooks is correct that the actions of Solomon are exempted from the penalty provision. This fact, however, does not grant him the authority to act pursuant to an improper appointment. Therefore, Hooks’s argument is without merit.

IV. ORDER

Therefore, it is hereby **ORDERED** that Kitsap’s motion to dismiss (Dkt.12) is **GRANTED** and Hooks’s petition is **DISMISSED**.

CERTIFICATE OF SERVICE

I certify that on this day I served the foregoing *Motion to Dismiss* to the parties of this proceeding and their attorneys or authorized representatives, as listed below. A true copy thereof was sent via U.S. Mail to the following:

Ronald K. Hooks, Regional Director
National Labor Relations Board Region 19
915 2nd Avenue, Suite 2948
Seattle, WA 98174-1006
And via FAX: 206-220-6305

Richard C. Fiol
Counsel for the Acting General Counsel
National Labor Relations Board Region 19
915 2nd Avenue, Suite 2948
Seattle, WA 98174-1006
And Via Email: Richard.Fiol@nlrb.gov

Terry Jensen
Robblee Detwiler & Black
2101 Fourth Ave., Suite 1000
Seattle, WA 98121
And Via Email: tjensen@unionattorneysnw.com

Tim Tharp
 Sarah Clifthorne
 Washington Federation of State
 Employees Council 28
 1212 Jefferson St. SE Suite 300
 Olympia, WA 98501
 And Via Email: timt@wfse.org; sarahc@wfse.org

Dated at Yakima, Washington this 30th day of August, 2013.

Sandra Lepez, Legal Assistant
Halverson | Northwest

MOTION TO DISMISS SECOND AMENDED CONSOLIDATED COMPLAINT -7

HALVERSON | NORTHWEST P.C.
405 East Lincoln Ave. | P O Box 22550
Yakima, WA 98907
509 248 8030

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P. 01/04

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES

KITSAP TENANT SUPPORT SERVICES, INC.

and

WASHINGTON FEDERATION OF STATE
EMPLOYEES, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL 28, AFL-CIO

Cases 19-CA-74715
19-CA-79006
19-CA-82869
19-CA-86006
19-CA-88935
19-CA-88938
19-CA-90108
19-CA-96118
19-CA-99659

**ORDER DENYING RESPONDENT'S MOTION TO DISMISS SECOND AMENDED
CONSOLIDATED COMPLAINT**

On August 30, 2013, Respondent filed a Motion to Dismiss the Second Amended Consolidated Complaint in this case (the "Motion"). The Respondent contends that the Board lacks a valid quorum because the President's recess appointments are constitutionally invalid. In addition, the Respondent argues that the purportedly invalid Board lacked the authority to appoint the Acting General Counsel, Lafe Solomon, and therefore the Region did not have proper authorization to issue the complaint in this case. Finally, the Motion argues that the instant complaint is invalid because Region 19 Regional Director was appointed at a time when both the Board and its Acting General Counsel were invalidly appointed and the resulting issued complaint is improper and should be dismissed consistent with the District Court for the Western District of Washington's order dated August 13, 2013, in the related case styled *Hooks v. Kitsap Tenant Support Services, Inc.*, No. C13-5470 BHS, dismissing the Regional Director's petition for preliminary injunctive relief pursuant to Section 10(j) of the National Labor Relations Act for the same reasons.

On September 4, 2013, I issued an Order to Show Cause (OSC) asking the parties to respond by noon today as to why the Motion should not be granted and also directed the Acting General Counsel to advise me whether the Board intends to appeal the District Court for the Western District of Washington's order dated August 13, 2013, in the related case styled *Hooks v. Kitsap Tenant Support Services, Inc.*, No. C13-5470 BHS, dismissing the Regional Director's

GENERAL COUNSEL
EXHIBIT NO. 1(mmm)

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P.02/04

petition for preliminary injunctive relief pursuant to Section 10(j) of the National Labor Relations Act (the 8/13 D.Ct. Order).

Today, before noon, the Charging party filed its opposition to the Motion (CP Opposition) arguing that there is no valid basis to dismiss the complaint as the district court judge has no power to decide the merits of this case and whose procedural decision is not binding on me. Finally, the Charging Party incorporates and joins in the arguments of the Acting General Counsel referred to below to further argue that the district court judge misconstrued the relevant statutory scheme showing the Acting General Counsel has been properly designated to issue the current complaint.

Today, also before noon, the Acting General Counsel (AGC) filed his opposition to the Motion (the Opposition). The Opposition first states that the AGC "is still actively considering an appeal of the [8/13 D.Ct. Order]" As such, I find that the 8/13 D.Ct. Order is not final and currently has no relevance to this administrative adjudication of the complaint or the instant Motion.

The Opposition further argues that the Motion should be denied because the *Noel Canning* case has no bearing on the issuance of complaints. The Opposition also points out the procedural background leading to the valid designation of the current AGC in Washington D.C. President Obama designated career Board attorney Lafe E. Solomon to serve as the Board's General Counsel. The Opposition further states that President Obama expressly based his designation of Mr. Solomon on the Constitution and the laws of the United States, including Section 3345(a) of title 5, U.S.C. as amended by the Federal Vacancies Reform Act (the Vacancies Act). For the 10 years immediately preceding his designation, Mr. Solomon served in a Senior Executive Service position being paid greater than a GS 15 level.

On 1/5/11, the President submitted to the Senate Mr. Solomon's nomination to serve as the Board's General Counsel. That nomination remained pending before the Senate until 1/3/13, when the Senate returned his nomination to the President. On 5/24/13, the President submitted anew Mr. Solomon's nomination to the Senate to serve as the Board's General Counsel. Contrary to the Motion, the Opposition argues that Mr. Solomon's designation as the Board's AGC is valid under Section 3345(a)(3) of the Vacancies Act because that section authorizes the President to designate an officer or employee, like Mr. Solomon for 38 years, of the Executive agency in which the vacancy occurs as Mr. Solomon served as AGC for 198 days before his nomination on 1/5/11. Then, following the return of Mr. Solomon's nomination by the Senate on 1/3/13, he

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P. 03/04

served as AGC for 141 days before the president re-nominated him on 5/24/13. "Because his nomination remains pending before the Senate, the 210-day limitation on designations under the [Vacancies Act] is suspended." Opposition at 5-6. As a result, the AGC was properly designated and Regional Director Hooks properly issued the complaint as an officer of the Board and a subordinate of the AGC.

I hereby deny the Motion in its entirety as to Respondent's argument that the Board lacks a constitutionally valid quorum because this question about the Board's validity remains in litigation, and pending a definitive resolution, the Board is charged to fulfill its responsibilities under the Act. See *Bloomingsdale's Inc.*, 359 NLRB No. 113 (2013) (Board rejects same argument for same reasons.). More importantly, as pointed out by the AGC, I further find that the AGC's authority to issue and prosecute a complaint is unaffected by any issue concerning the composition of the Board. See e.g. *NLRB v. Food Workers Union*, 484 U.S. 112, 126-128 (1987); *NLRB v. FLRA*, 613 F.3d 275, 278 (D.C. Cir. 2010)).

I also follow the Opposition's and the Board's reasoning and further find that the Acting General Counsel was properly designated under the Federal Vacancies Reform Act, Section 3345(a)(3). I find that pursuant to Section 3345(a)(3) of the Vacancies Act, Mr. Lafe Solomon, the current AGC, was properly designated by President Obama as a qualified officer or employee of the NLRB, an Executive agency in which a vacancy occurred as Mr. Solomon has worked for the NLRB at least 90 days in the prior year before his designation and he was paid at the GS 15 level or greater. Furthermore, as referenced above in the Opposition, I further find that Mr. Solomon's designation falls within the Vacancies Act time limitations and because his nomination remains pending before the Senate, the 210-day limitation on designations is suspended. Consequently, I find the Mr. Solomon was properly designated under the Vacancies Act and Director Hooks properly issued the complaint as an officer of the Board and a subordinate of the AGC.

Moreover, I further follow the Board's earlier finding that even if the designation of Mr. Solomon had somehow not been proper under the Vacancies Act, that defect would not constitute grounds for attacking the complaint. It is the *enforcement* provision of the Vacancies Act, 5 U.S.C. [Sec.] 3348, that deems an office 'vacant' and actions taken by its occupant of 'no force and effect' if it was temporarily filled in a manner inconsistent with the Vacancies Act. This provision, by its terms, is expressly and specifically inapplicable to the office of the Board's General Counsel. 5 U.S.C. Sec. 3348(e)(1). Thus, regardless whether the Acting General

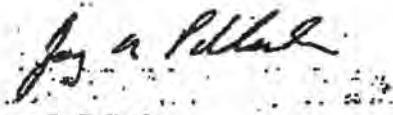
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P.04/04

Counsel was properly designated under the Vacancies Act, the complaint is not subject to attack based on the circumstances of his designation. See *Sub-Acute Rehabilitation Center at Kearny, LLC d/b/a Belgrove Post Acute Care Center*, 359 NLRB No. 77, slip op. at 1 fn. 1 (2013).

For these reasons, I do not find that good cause has been shown and the Respondent's Motion to Dismiss the Second Amended Consolidated Complaint is **DENIED** in its entirety and hearing shall resume as scheduled on Tuesday, September 10, 2013 at 9:00 a.m. in Seattle, Washington.

Dated: September 6, 2013, San Francisco, California.



Jay R. Pollack
Administrative Law Judge

Served by facsimile or e-mail upon the following:

Richard Fiol, Esq. NLRB Region 19 Fax: 206.220.6305

Gary Lofland, Esq. for the Respondent Fax: 509.452.2858

Terry Jensen, Esq. for the Union Fax: 425.888.6183

Tim Tharp, Esq. &
Sarah Clifhorne, Esq. Fax: 360.352.7608

JD(SF)-22-14
Bremerton and Port Angeles, WA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

KITSAP TENANT SUPPORT SERVICES, INC.

and

WASHINGTON FEDERATION OF STATE
EMPLOYEES, AMERICAN FEDERATION OF
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Cases 19-CA-074715
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19-CA-086006
19-CA-088935
19-CA-090108
19-CA-096118
19-CA-099659

Richard Fiol and Elizabeth DeVleming,
for the General Counsel.

Gary Lofland (Halverson Northwest Law Group),
of Yakima, Washington, for the Respondent.

Terry C. Jensen and SaNni Lemonidis
(Robblee Detwiler & Black), of Seattle Washington,
for the Union.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this case in trial at Seattle, Washington, on various dates beginning May 28, 2013, and ending November 14, 2013. On February 16, 2012, Washington Federation of State Employees, American Federation of State, County and Municipal Employees, Council 28, AFL-CIO (the Union) filed the original charge in Case 19-CA 074715 alleging that Kitsap Tenant Support Services, Inc. (Respondent) committed certain violations of Section 8(a)(3) and (1) of the National Labor Relations Act (the Act). The Union filed the charge in Case 19-CA-079006 on April 17, 2012. On June 11, 2012, the Union filed the charge in Case 19-CA-082869. On July 25, 2012, the Union filed an amended charge in Case 19-CA-082869. The Union filed amended charges in Case 19-CA-082869 on December 7, 2012, and January 30, 2013, respectively. The Union filed the charge in Case 19-CA-086006 on July 25, 2012. The Union filed the charge in Case 19-CA-088935 on September 10, 2012. On October 9, 2012, the charge was amended. The charge in Case 19-CA-088935 was amended on October 1, 2012, and again on January 10, 2013. The Charge in Case 19-CA-088938 was filed on September 10, 2012. The Union filed amended charges in Case 19-CA-088938 on January 30 and February 8, 2013.

The charge in Case 19-CA- 090108 was filed on September 26,2012, alleging that Respondent violated Section 8(a)(1) and (5) of the Act. The charge in Case 19-CA-090108 was amended on January 10, 2013. On January 10, 2013, the Union filed the charge in Case 19-CA-096118. The charge in Case 19-CA-099659 was filed on March 4, 2013. On June 22, 2012, the Regional

5 Director for Region 19 of the National Labor Relations Board (the Board) issued a consolidated complaint and notice of hearing against Respondent, alleging that Respondent violated Section 8(a)(5), (3), and (1) of the Act. Respondent filed a timely answer to the complaint, denying all wrongdoing. An order further consolidating cases and amended complaint issued on February 28, 2013. A second amended consolidated complaint was issued on March 27, 2013.

10 Respondent filed timely answers to the complaints, denying all wrongdoing.

The parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. Upon the entire record, from my observation of the demeanor of the witnesses,¹ and having considered the post-hearing briefs of

15 the parties, I make the following

Findings of Fact

I. Jurisdiction

20 The Respondent Corporation, with an office and principal place of business in Bremerton, Washington, has been engaged in the business of providing residential support services. In the 12 months prior to the issuance of the complaint, Respondent, in conducting its business operations, derived gross revenues in excess of \$250,000. Further, Respondent

25 performed services valued in excess of \$50,000 directly to the State of Washington. Accordingly, Respondent admits, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

30 The Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

35 Respondent's primary business office is located in Bremerton, Washington; it also maintains an office in Port Angeles, Washington. Respondent operates three divisions, home care, tenant support and community protection services. This case involves the Union's attempt to organize Respondent's tenant support services and community protection service operations. The Union was certified as the exclusive representative for direct service staff and head of

¹ The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings herein, their testimony has been discredited, either as having been in conflict with credited documentary or testimonial evidence, or because it was in and of itself incredible and unworthy of belief.

households in the intensive tenant support program on March 23, 2012. The employees in the community protection services were held to be guards and not included in the bargaining unit.

The Union's organizing campaign began in November 2011. In December 2011
Respondent learned of the Union's campaign and held its first campaign meeting on
December 7, 2011. On December 20, the Union filed its petition with Region 19 of the Board
seeking to represent a unit of approximately 150 of Respondent's employees in the intensive
tenant support services and community protection services programs.

Employee Bonnie Minor was hired by Respondent in June 2008. At the time of her
discharge in December 2011, Minor was working as the head of household at Respondent's
Olympus House. In late 2011, Minor was planning Thanksgiving and Christmas parties for
Respondent's clients. Minor received calls from other employees that the clients could not
afford two parties. Since the Thanksgiving party was only days away, Minor decided to cancel
the Christmas party. On December 6, Minor was told by Jamie Callahan, client resource
manager, to put the Christmas party back on schedule.

On December 4, Minor became a member of the Union's organizing committee and her
picture was printed on a union flyer. On December 7, Minor spoke out in favor of the Union at
the Respondent's union campaign meeting. On the morning of December 7, Minor received a
phone call from Alan Frey, Respondent's general manager, to tell her to reschedule the
Christmas party. He told Minor that she had no right to cancel the party. Minor said she had
canceled the party because clients could not afford two parties. Immediately thereafter, Minor
rescheduled the Christmas party.

Minor was asked to meet with Frey that afternoon, Minor met with Fry and Human
Resources Coordinator Kathy Grice. Frey again told Minor that she had to reschedule their
Christmas party. Minor stated that she had already rescheduled the party.

Minor attended Respondent's union campaign meeting shortly after her meeting with
Frey. Minor asked Respondent's consultant how much money Respondent was paying him. The
consultant declined to answer.

Minor then attended a union meeting. Shortly after the union meeting, Minor received a
call from Grice informing her that she was being terminated. Respondent's discharge letter
states that Minor failed to follow the protocol set forth by a direct supervisor in regards to a
client party and gift exchange. The letter also criticizes Minor for her poor attitude and judgment
crossing professional boundaries, misrepresenting information in regards to client and staff
causing distress to the clients.

Frey testified that he learned on the morning of December 7, that Minor had told three
clients that Frey had screamed and yelled at her and had been mean to her. Frey had a meeting
with Minor that afternoon in which she admitted that she told clients that Fry had screamed and
yelled at her. When Frey asked why Minor had done so, she answered that Frey was treating her
like her father. She admitted that Frey had not yelled or screamed. Frey explained that what
Minor had done was "triangulation" and inappropriate. The harm was to clients and the trust

Frey had built with those clients over the years. I find support for Frey's explanation in the testimony of expert witness Allan Comte.

5 Employee Alicia Sale began working for Respondent in 2008. Employee Hannah Gates began working for Respondent in 2010. Sale and Gates had their pictures on a pro-union flyer. On December 20, 2011, Sale and Gates were working at Respondent's "men's house. That morning Sale noticed a bruise and scratch on client R. Sale notified Gates of the situation and Gates called the head of household who was at the "women's house." Gates documented the injury in the client's folder. Client R then complained to Sale of a stomachache. Sale and Gates
10 checked R's temperature and bowel movements. At that point the head of household called back and said that Fry and Mieke Middelhoven would be coming to the house. Gates told the head of household about R's stomachache.

15 That morning, Frey and Mieke Middelhoven, program coordinator, arrived at the men's house. Upon arriving at the house, Frey inspected client R's injury and determined that the bruise had come from client R's wheelchair. Frey instructed Gates and Sale to pad and tape the wheelchair. Fry spoke to the client and asked whether client R had requested to see a doctor. Client R responded that he had. According to Frey, Sale stated that client R had been asking to see a doctor all morning. At the hearing, Sale denied this. According to Frey, Sale stated that
20 there was not enough staff to take client R to the doctor. Middelhoven made arrangements for Sale to go to the women's house and for the head of household to take client R to the doctor.

25 The following day, Frey returned to the men's house. He found that the wheelchair had not been repaired as he had directed. He taped the wheelchair himself. Frey placed Sale and Gates on administrative leave for failing to provide medical attention to client R and for failing to tape the wheelchair as directed. Both Sale and Gates denied that client R had requested to go to the doctor. It is clear that failure to take a client who has requested medical attention to a doctor is abusive.

30 On December 23, Sale and Gates were informed by Grice that they were being placed on administrative leave, because they had not taken client R to the doctor and had not timely repaired his wheelchair. Fry reported this incident to the State of Washington.

35 On February 1, 2012, Fry discharged Sale and Gates for the incidents of December 20. The State of Washington later dismissed the charges against Sale and Gates substantially because it could not rely on the testimony of client R.

40 Employee Terry Owens started working for Respondent in the community protection program in February 2011. On December 9, 2011, Owens attended Respondent's union campaign meeting. Owens spoke out in favor of the Union at that meeting. Owens met with Frey on December 12 and presented Frey with 10 questions. Three weeks later, Owens testified for the Union in the representation case.

45 On February 14, 2012, Frey observed a locked cabinet in the house where Owens worked. Owens explained that client J had agreed to store junk food in the locked cabinet and that the head of household would control client J's food intake. Owens told Frey that client J still had access to other food cabinets; Frey also observed postings that were degrading to client

J. The next day Frey called a meeting with Owens. Frey placed Owens on administrative leave. The head of household was suspended pending investigation and later resigned.

5 Frey told Owens that he was on administrative leave so that Frey could investigate the locked cabinet. About a week later Owens met with Frey. Owens was discharged on March 28. The Respondent claims that Owens asked to be discharged. Owens was terminated for his treatment of client J; placing restrictions on client J. Frey testified that he observed Owens behavior toward client J and found it to be inappropriate, Frey testified that Owens seemed angry and failed to understand that his approach had been wrong.

10 Employee Gary Martell was hired by Respondent in October 2011. In December 2011, Martell began working in the supportive living program. Martell worked with different clients in different locations. On May 22, 2012, the Union notified Respondent that Martell had been elected to the Union's bargaining team. Martell attended a bargaining session on June 4.

15 Martell attended a paperwork meeting in the first week of June with Callahan and Parsons. The ledger part of Martell's paperwork was blank. Callahan asked why the paperwork was not done and Martell did not make an excuse. Callahan informed Frey that Martell's paperwork was not complete. Frey took Martell to another room and told him to complete the
20 paperwork.

25 A few minutes later, Frey entered the room and stated that Martell was being placed on administrative leave because his paperwork was incomplete. Frey testified that Martell had not performed any work after being placed in the back room. Martell received a letter dated June 8 from Frey stating that he was on administrative leave. Included in the letter were allegations that Martell's schedule included overlaps indicating that Martell was in two places at one time. (GC Exh. 129.) On June 12, Martell met with Frey. According to Frey, at this meeting, Martell acknowledged that there was no excuse for not completing his paperwork. Martell admitted
30 missing service hours for clients.

35 After being placed on administrative leave, Martell went to a client's home and told the client that he had been placed on administrative leave. Such conduct is prohibited by Respondent. On July 19, 2012, Martell was terminated by Frey. Martell was terminated for not completing his paperwork, not providing service hours, and visiting a client while on administrative leave.

40 Employee Johnnie Driskell began working for Respondent in February 2004. In May 2011, Driskell was demoted from head of household to caregiver. Driskell was later reinstated as a head of household. Driskell was a leader in the union campaign; Her picture was included with union supporters in the Union's mid-December flyer. Driskell was later elected to the Union's bargaining team.

45 On June 6, 2012, Driskell was presented with a written warning for being late for her June 4 shift. Driskell had left a phone message on June 1, stating that she was switching shifts with another employee on June 4, so that she could participate in the Union's bargaining training. Driskell was to report at 4 p.m. on June 4. However, on June 4, Driskell did not report until 4:15 p.m. Overtime was paid to an employee who worked until Driskell arrived.

On Sunday June 24, Frey wrote Driskell regarding a plan of care meeting held without the presence of a member of management. The purpose of plan of care meeting is to review the care needed and the hours of service allocated for the care of the client. . Driskell did not call the meeting. According to Frey, Driskell had worked with the client only 2 months and that a member of management needed to be present. Management requested an additional meeting. As a result of that meeting, the hours of service to the client were increased. Respondent claims that Frey's letter to Driskell was not disciplinary but rather provided guidance to Driskell.

On July 19, 2012, Driskell received a disciplinary warning for loaning client money. Driskell claimed that she did what she had done in the past. Frey met with Driskell and a union representative. Driskell claimed that everyone loaned money to clients. Frey cited policy against loaning money to clients. Driskell then claimed that it was not a loan but a gift.

On July 22, while off duty, Driskell received a call from the house where she was head of household. The staff reported that two clients were not getting along and they requested Driskell's assistance. Driskell drove to the house and found that two clients had struggled over a television remote control. Driskell met with Frey the next day but did not mention the incident. After meeting with Frey, Driskell reported the incident to management. Driskell described the incident as pushing. The next day, Frey placed Driskell on suspension.

Respondent placed Driskell on administrative leave pending the investigation of a client-to-client assault. Driskell had not seen any meaningful contact between the clients. Frey reported Driskell to the State of Washington for not reporting a client-to-client assault. A meeting was held between Frey and Driskell and a union representative on August 3. Frey ended the meeting as a result of the union representative's conduct. Frey held another meeting with Driskell on August 14, Frey did not appreciate Driskell's attitude at the meeting. On August 23, Frey terminated Driskell's employment.

Employee Lisa Hennings was hired by Respondent in November 2009. In early 2010, Hennings was promoted to a head of household position. In November 2011, Hennings became involved in the Union's organizing campaign. Her picture appeared on the Union's flyer in December 2011. In December 2012, Hennings attended a meeting at Respondent's Port Angeles office. At the meeting Hennings indicated to Frey that she was in favor of the Union. In May 2012, Hennings was elected to the Union's bargaining committee.

On March 16, 2012, Hennings received a letter of reprimand for loaning clients money. On a trip to a grocery store with three clients, Hennings lent the clients money so that they could pay for all their groceries.

On April 12, Hennings received a warning for being late. Hennings had called the head of household to say that she would be a few minutes late. The next day, Hennings spoke with Grice. Grice stated that Hennings had not called the office. Hennings had never before been disciplined for being a few minutes late.

On August 6, Hennings attended a bargaining session as a member of the Union's bargaining team. On August 9, Hennings was writing down the shifts to be worked at her house.

There had been confusion due to employee absences. Frey told Hennings that she had better not be scheduling because there had been testimony in the Board representation case that head of households did not do scheduling. Hennings answered that she was not scheduling but merely helping management. Frey checked with his office and found that Hennings was not helping management with the schedule.

On August 16, Hennings received a letter of direction regarding monthly narratives and medication charting. Hennings was cited for too few narratives of client progress. There were two medical errors in the reports.

On August 20, Hennings received a written warning for failure to work her assigned shift. On August 17, Frey had driven by the house where Hennings worked and observed her getting out of her car alone. Frey thought Hennings was at another house supporting clients at a party. Hennings explained that she had left the party to aid her daughter and that she had asked another staff person to watch her client. Hennings was written up for not working her assignment and not notifying the office to secure coverage for her client.

In December 2012, Frey and M. E. Closser, Respondent's owner, approached Hennings and complained that the Union had marched on Closser's home. Hennings said that she was not there. Closser and Frey pressed the issue but Hennings denied responsibility.

On February 4, 2013, Frey called Hennings and stated that he had concerns with her work and that she would be placed on administrative leave while he investigated. Thereafter, Hennings was demoted from her position as head of household. There was no reduction in pay. Frey was concerned about her caregiving and training, completing necessary paperwork, completing narratives, leaving clients unattended, and not calling the office. Hennings requested a transfer to the graveyard shift where there was less responsibility.

The Union was certified as the exclusive collective-bargaining agent on March 20, 2012. The Union requested bargaining dates on April 23. On May 21, Respondent agreed to bargaining dates. On May 21, the Union informed Respondent of the identity of the 5 employee members of the bargaining committee. Respondent did not meet with the Union until July 13.

At the July 13 meeting, the Union discussed its first proposal which it provided to Respondent the previous week. Respondent made no proposals at that meeting. On August 6, Respondent made its first proposal. The Union opposed Respondent's proposals on management rights, at-will employment, lack of union security, and removing head of households from the bargaining unit. The Union contended that Respondent's proposals on management rights and at-will employment would nullify nearly everything but compensation that the Union was attempting to bargain for. No tentative agreements were reached but the parties agreed to meet again on September 17.

The parties met on September 17. Prior to that meeting the Union had provided Respondent with modified proposals. Respondent refused to discuss certain proposals. The parties next met on November 26. The parties reached an agreement on the bargaining unit and agreed to meet on December 18. Respondent later canceled the December 18 meeting.

Respondent finally agreed to meet on February 27, 2013. That date was canceled and the parties agreed to meet on March 11 and 12.

5 In May 2012, Respondent sent the Union a letter in which it stated that it reserved the right for its "Board" to void any tentative agreements. The Union responded asking, "[T]o which Board are you referring to?" Respondent answered that it was referring to its board of directors. The Union sent a request for information on June 1. Respondent answered that request on June 11. On July 17, the Union made a request for information regarding the head of household position. Respondent provided information on October 12, 2012. The Union
10 requested another information request on October 29. The Union requested documents and/or information regarding the money spent on unit employees. Respondent refused to furnish such information.

15 Respondent proposed a broad management-rights provision. Further, Respondent proposed an employment at-will provision. The Union sought just cause language. Respondent's proposed grievance provision did not apply unless there was a demonstrated specific violation of the collective-bargaining agreement. In its progressive discipline proposal. Respondent proposed that "the degree of discipline is solely within the judgment" of Respondent. Respondent slightly modified its management-rights proposal on October 16.
20 Eventually the Union agreed substantially to Respondent's management-rights clause.

The General Counsel contends that Respondent failed and refused to bargain in good faith regarding the head of household position. On September 6, Respondent told the Union that it would bargain to impasse over the elimination of the head of household position and later
25 implement its position. On November 26, the parties reached tentative agreement on the bargaining unit which included the heads of household. However, on April 12, 2013, Respondent stated that it would seek to eliminate the head of household position and create a supervisory household manager position.

30 The General Counsel contends that Respondent maintained the following rules in violation of Section 8(a)(1):

35 Professional Standards: In the course of your work, you may have occasion to learn of matters which are confidential. It is your ethical obligation to consider all information about residents, clients, their families, and fellow employees, as privileged. You are expected to keep this knowledge in strict confidence, Never discuss any facet of Kitsap Tenant Services, inc. or its programs either in or outside of your work site where they can be overheard by unauthorized people, To protect yourself from accidental infringement of the policy, please refer all matters to your Coordinator.

40 Professional Boundaries: When an employee is no longer employed by KTSS, Inc., they are required to sign a confidentiality agreement stating they have not and will not reveal Client information or confidential matters learned while in the employ of the agency.. Further, the employee must certify that they have not, nor in any way been party to or
45 knowingly permitted:

- Disclosure of any confidential matters, or trade secrets of Kitsap Tenant Services, Inc.

- Retention or duplication of any confidential materials or documents issued to or used by the employee during employment.

Employee Professional Relationships: You understand that you are not allowed to discuss any issue regarding your job performance or relationships with co-workers or supervisors with Clients or within earshot of Clients.

Canvassing or Soliciting: Staff members are expected to keep such activities from occurring on our premises and work sites. Employees are not allowed to sell, push products, or philosophy, religion to Clients or staff.

Conditions of Employment: Employee agrees not to divulge, publish, or otherwise make known to unauthorized persons or to the public any information contained in the course of providing services, where release of such information may possibly make the person or persons whom are receiving such services, supervisors, Clients families and/or fellow Caregivers identifiable. Employees should recognize that unauthorized release of confidential information might subject them to civil liability under the provisions of State law and/or dismissal from KTSS, Inc.

Reasons for Termination:

- *Violation of Client and/or program confidentiality.
- * Violation of policy and procedures of company.
- * Misconduct as defined in the orientation manual.
- * Failure to follow the Employee Professional Relationships Contract.
- *Failure to sign and follow the Maintaining Client Confidentiality.

Misconduct: Giving Client information or opinions of the inner workings of the office (similar to rules previously mentioned).

III. Conclusions

The Rules

The Board held in *Kinder-Care Learning Centers*, 299 NLRB 1171 (1990), that employees have a Section 7 right to communicate regarding their terms and conditions of employment to other employees, an employer's customers, the media, and the public. In *Beth Israel Hospital v. NLRB*, 437 US 483 (1978), it was held that a hospital could prohibit solicitations in patient care areas because "the primary function of a hospital is patient care and . . . a tranquil atmosphere is essential to carrying out that function." Here, Respondent has a fiduciary duty to keep client information confidential. Its clients are developmentally disabled and vulnerable, and should be protected concerning any information regarding their identity or plan of treatment. Information regarding Respondent's relationship with its caregivers could cause emotional problems for Respondent's developmentally disabled clients. Under these circumstances, I view patient care areas as anywhere the client may be. Thus, I find that Respondent's rule regarding discussing any issues related to job performance or relationships with coworkers or supervisors with clients or within earshot of clients' is necessary and a lawful exception to the general rule.

Employees have a Section 7 right to communicate regarding their terms and conditions of employment to other employees, an employer's customers, the media, and the public. When an employee is no longer employed by Respondent he or she is required to sign a confidentiality agreement stating they have not and will not reveal client information or confidential matters learned while in the employ of the agency. I find this rule too broad and thus violative of Section 7 of the Act.

The Employee Discipline

In cases involving dual motivation, the Board employs the test set forth in *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399-403 (1983). Initially, the General Counsel must establish by a preponderance of the credible evidence that antiunion sentiment was a "motivating factor" for the discipline or discharge. This means that the General Counsel must prove that the employee was engaged in protected activity, that the employer knew the employee was engaged in protected activity, and that the protected activity was a motivating reason for the employer's action. *Wright Line*, supra, 251 NLRB at 1090. Unlawful motivation may be found based upon direct evidence of employer animus toward the protected activity. *Robert Orr/Sysco Food Services*, 343 NLRB 1183, 1184 (2004). Alternatively, proof of discriminatory motivation may be based on circumstantial evidence, as described in *Robert Orr/Sysco Food Services*, supra:

To support an inference of unlawful motivation, the Board looks to such factors as inconsistencies between the proffered reasons for the discipline and other actions of the employer, disparate treatment of certain employees compared to other employees with similar work records or offenses, deviations from past practice, and proximity in time of the discipline to the union activity. *Embassy Vacation Resorts*, 340 NLRB 846, 848 (2003).

If the General Counsel has satisfied the initial burden, the burden of persuasion shifts to Respondent to show by a preponderance of the credible evidence that it would have taken the same action even in the absence of the employee's protected activity. If Respondent advances reasons which are found to be false, an inference that the true motive is an unlawful one may be warranted. *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966); *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982). However, Respondent's defense does not fail simply because not all the evidence supports its defense or because some evidence tends to refute it. *Merrilat Industries*, 307 NLRB 1301, 1303 (1992). Ultimately, the General Counsel retains the burden of proving discrimination. *Wright Line*, supra, 251 NLRB at 1088 fn. 11.

The General Counsel has established both Bonnie Minor's union activities and the knowledge or constructive knowledge of those activities by Respondent. There is no doubt that Minor took the actions for which she was terminated. The issue as to Minor is whether or not the conduct was the reason for the discharge rather than her protected union activities. It is therefore the termination process that must be examined. The termination of Minor involved multiple steps and multiple actions by Respondent's Frey. Each must be evaluated under the standard set forth above.

First, I find that the actions of Frey regarding the Christmas party did not involve disparate treatment of Minor. Thus, I find that the initiation of the meeting respecting the incident was not improper. I further find that that in telling clients that Frey had yelled and screamed at her, Minor engaged in a major violation of policy.

Having gotten past the investigative process, scrutiny must fall on the discharge decision. I have considered the demeanor of the witnesses, the arguments of the parties on brief and the record as well on this critical issue. I find that the General Counsel has not met his initial burden to show that antiunion sentiment was a “motivating factor” for Minor’s discharge.

Considering the context, I find that the General Counsel has not been able to demonstrate by a preponderance of the credible evidence that the discharge involving Minor was based on antiunion sentiment. Finally, I find there was no antiunion animus in the final discharge decision taken or its being carried out as set forth above.

Given this finding, it follows that the General Counsel has failed to prove that Bonnie Minor was fired for union activities as alleged in the complaint. Therefore I shall dismiss those complaint paragraphs that apply to Minor.

In cases involving dual motivation, the Board employs the test set forth in *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399-403 (1983). Initially, the General Counsel must establish by a preponderance of the credible evidence that antiunion sentiment was a “motivating factor” for the discipline or discharge. This means that General Counsel must prove that the employee was engaged in protected activity, that the employer knew the employee was engaged in protected activity, and that the protected activity was a motivating reason for the employer’s action. *Wright Line*, supra, 251 NLRB at 1090. Unlawful motivation may be found based upon direct evidence of employer animus toward the protected activity. *Robert Orr/Sysco Food Services*, 343 NLRB at 1184/ Alternatively, proof of discriminatory motivation may be based on circumstantial evidence, as described in *Robert Orr/Sysco Food Services*, supra:

To support an inference of unlawful motivation, the Board looks to such factors as inconsistencies between the proffered reasons for the discipline and other actions of the employer, disparate treatment of certain employees compared to other employees with similar work records or offenses, deviations from past practice, and proximity in time of the discipline to the union activity. *Embassy Vacation Resorts*, 340 NLRB at 848.

When the General Counsel has satisfied the initial burden, the burden of persuasion shifts to Respondent to show by a preponderance of the credible evidence that it would have taken the same action even in the absence of the employee’s protected activity. If Respondent advances reasons which are found to be false, an inference that the true motive is an unlawful one may be warranted. *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966); *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982). However, Respondent’s defense does not fail simply because not all the evidence supports its defense or because some evidence tends to refute it. *Merrilat Industries*, 307 NLRB 1301, 1303 (1992).

Ultimately, the General Counsel retains the burden of proving discrimination. *Wright Line*, supra, 251 NLRB at 1088, fn. 11.

The General Counsel has established union activity by Alicia Sale and Hannah Gates.

5 The issue here involves Respondent's reason for the discharge.. Frey heard from client R that he had requested to see a doctor. Sale and Gates initially stated that they did not have the staff to take client R to the doctor. Frey asked them to tape client R's wheelchair and this was not done. Frey reported the failure to take client R to the doctor to the State of Washington. Here, I find that Frey acted upon his belief that Sale and Gates had improperly failed to take client R to the
10 doctor. Thus, I find that Respondent has established that these employees would have been discharged even in the absence of union activities.

Terry Owens

15 In all cases turning on employer motivation, causation is determined pursuant to *Wright Line*, 251 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Initially, the General Counsel must prove, by a preponderance of the evidence, that protected conduct was a "motivating factor" in the employer's decision. To establish this showing, the General Counsel must adduce evidence of protected activity, Respondent's
20 knowledge of the protected activity, Respondent's animus toward the protected activity, and a link or nexus between the protected activity and the adverse employment action. *Farmer Bros. Co.*, 303 NLRB 638, 649 (1991). If the General Counsel makes this initial showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the employees' union activity. *American Gardens Management Co.*, 338 NLRB 644,
25 645 (2002), citing *Taylor & Gaskin, Inc.*, 277 NLRB 563 fn. 2 (1985), both incorporating *Wright Line*, supra.

The General Counsel has established that Owens was engaged in union activities and that Respondent had knowledge of those activities. Respondent established that Owens had taken part
30 in restricting client J's access to food supplies and was aware of, if not the author of improper notices to client J. Frey observed and found wanting Owens interactions with client J. Accordingly, I find that Respondent established that Owens would have been discharged even in the absence of his union activities.

35 Gary Martell

The General Counsel has established that Martell engaged in union activities and that Respondent had knowledge of such activities. However, Martell failed to complete his required paperwork. Martell had no excuse for this failure. Martell was suspended pending an
40 investigation. Martell improperly visited a client at the client's home and told the client that he had been suspended. Thereafter, Frey discharged Martell. Again, I find that Respondent has established that Martell engaged in conduct for which he would be discharged even in the absence of his union activities.

Johnnie Driskell

5 The General Counsel has established both Driskell's union activities and the knowledge of those activities by Respondent. There is no doubt that Driskell took the actions for which she was terminated. The issue as to Driskell is whether or not the conduct was the reason for the discharge rather than her protected union activities. It is therefore the termination process that must be examined. The termination of Driskell involved multiple steps and multiple actions by Respondent's Frey. Each must be evaluated under the standard set forth above.

10 First, I find that the action of Frey regarding Driskell's being late on June 6 questionable. Driskell had made arrangements to cover her shift and called when she would be late. Driskell received a letter of direction for not notifying Respondent of a plan of care meeting. This letter was not discipline. Further, this action was based on Driskell's conduct and not her union activities. Driskell received a warning for loaning a client money. This was in violation of
15 company policy.

On July 22 Driskell intervened in a client-to-client dispute. She described the incident as pushing. Frey believed that there was client-to-client battery and reported this incident to the State of Washington. Driskell met with Frey on July 23 but did not mention the client dispute.
20

I have considered the demeanor of the witnesses, the arguments of the parties on brief, and the record as a whole on this critical issue. I find that the General Counsel has not met his initial burden to show that antiunion sentiment was a "motivating factor" for Driskell's discharge.
25

Considering the context, I find that the General Counsel has not been able to demonstrate by a preponderance of the credible evidence that the discharge involving Driskell was based on antiunion sentiment. Finally, I find there was no antiunion animus in the final discharge decision taken or its being carried out as set forth above.
30

Given this finding, it follows that the General Counsel has failed to prove that Johnnie Driskell was fired for union activities as alleged in the complaint. Therefore I shall dismiss those complaint paragraphs that apply to Driskell.

35 Lisa Hennings

In all cases turning on employer motivation, causation is determined pursuant to *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st. Cir. 1981), cert. denied 455 U.S. 989 (1982). Initially, the General Counsel must prove, by a preponderance of the evidence, that
40 protected conduct was a "motivating factor" in the employer's decision. To establish this showing, the General Counsel must adduce evidence of protected activity, Respondent's knowledge of the protected activity, Respondent's animus toward the protected activity, and a link or nexus between the protected activity and the adverse employment action. *Farmer Bros. Co.*, 303 NLRB 638, 649 (1991). If the General Counsel makes this initial showing, the burden
45 shifts to the employer to demonstrate that the same action would have taken place even in the absence of the employees' union activity. *American Gardens Management Co.*, 338 NLRB at

645, citing *Taylor & Gaskin, Inc.*, 277 NLRB 563 fn. 2 (1985), both incorporating *Wright Line*, supra.

5 The General Counsel has established that Lisa Hennings engaged in union activities and that Respondent had knowledge of those activities. Hennings received a letter of reprimand for loaning money to three clients. I find that this discipline was based on Hennings conduct and not her union activities. Hennings received a warning for being 7 minutes late. Other employees were late for longer periods of time without receiving discipline. Respondent did not explain this discrepancy.

10 Frey disciplined Hennings for staff scheduling. Frey said that since employees had testified that head of households had not done scheduling, Hennings should not be scheduling. Frey did not explain the inconsistency where Respondent had offered evidence in the representation case that heads of household did scheduling for their households.

15 Hennings received discipline for not doing narratives and for errors in medication charting. I find this discipline to be based in business reasons and, therefore, not discriminatory. Hennings received a warning for an incident on August 20. Frey had observed Hennings driving in her car when she was supposed to be at a party with a client. I find no violation in this discipline.

20 Respondent ultimately demoted Hennings for missing medical appointments, errors in medical charts, and her past disciplines. I find that the warnings to Hennings for being late and for scheduling were unlawful. To the extent that these warnings played a part in her demotion, I find the demotion unlawful.

The Alleged Refusal to Bargain

30 In determining good-faith bargaining, the Board examines the totality of the party's conduct both at and away from the bargaining table including delay tactics, failure and/or delay in providing information, unpalatable bargaining demands, and refusal to explain bargaining positions. *Fruehauf Trailer Services*, 335 NLRB 393 (2001). The determination of a party's subjective good faith in bargaining depends on an examination of the "totality of the circumstances". *NLRB v. Tomco Communications*, 567 F.2d 871, 883 (9th Cir. 1978). The Supreme Court has held that "the Board may not either directly or indirectly, compel concessions or otherwise sit in judgment on the substantive terms of collective bargaining agreements." *H. K. Porter Co. v. NLRB*, 397 U.S. 99, 106 (1970).

40 Section 8(a)(5) and (d) of the Act obligates parties to "confer in good faith with respect to wages, hours, and other terms and conditions of employment." *NLRB v. Borg-Warner Corp.*, 356 U.S. 342, 344 (1958). The good-faith requirement means that a party may not "negotiate" with a closed mind or decline to negotiate on a mandatory subject with a closed mind or decline to negotiate on a mandatory bargaining subject. "While Congress did not compel agreement between employers and bargaining representatives, it did require collective bargaining in the hope that agreements would result." *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956). Sincere effort to reach common ground is of the essence of good-faith

bargaining. *NLRB v. Montgomery Ward & Co.*, 133 F.2d 676, 686 (9th Cir. 1943); *NLRB v. Reed & Prince Mfg. Co.*, 118 F.2d 874, 885 (1st Cir.), cert. denied 313 U.S. 595 (1941).

5 The quantity or length of bargaining does not establish or equate with good-faith bargaining. *NLRB v. American National Insurance Co.*, 343 U.S. 395, 404 (1952). The Board will consider the “totality of the conduct” in assessing whether bargaining was done in good faith. *NLRB v. Suffolk Academy*, 322 F.2d 196 (2d Cir. 2003).

10 The General Counsel argues that Respondent delayed bargaining and engaged in dilatory tactics. Then after bargaining commenced, Respondent continued to delay. It canceled meetings in July and August. As a result, the parties only met six times since March 2012. In my view, this is evidence of bad faith. *Fruehauf Trailer Services*, 335 NLRB 393 (2001).

15 The General Counsel further argues that Respondent put forth proposals that were repugnant to the Union. First, the General Counsel alleges that Respondent’s proposed management-rights provision was so broad as to be repugnant to the Union. However, the Union agreed to Respondent’s proposal with a minor exception.

20 The General Counsel further argues that Respondent’s proposal to change the head of household position to a management position was evidence of bad faith. Section 8(a)(5) prohibits a party’s insistence upon a permissible subject as a condition precedent to entering an agreement and precludes a good-faith impasse. *Borg-Warner Corp.*, 356 U.S. at 347-349. However, Respondent did not insist on this provision to impasse. No impasse was ever reached.

25 Conclusions of Law

1. Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

30 2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(5) and (1) of the Act by refusing to delayed bargaining after the certification for almost 4 months.

35 4. Respondent violated Section 8(a)(1) by maintaining a rule prohibiting former employees from revealing client information or confidential matters learned while in the employ of the agency

40 5. Respondent violated Section 8(a)(3) and (1) by disciplining Lisa Hennings for being late and for scheduling employees.

6. Respondent violated Section 8(a)(3) and (1) for demoting Lisa Hennings from her position as head of household.

45 7. Respondent’s conduct above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action to effectuate the purposes and policies of the Act. Accordingly, I shall order Respondent to resume collective bargaining with the Union.

Having discriminatorily demoted employee Lisa Hennings, Respondent must offer her reinstatement and make her whole for any loss of earnings and other benefits, computed on a quarterly basis from date of demotion to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Respondent must also be required to remove any and all references to its unlawful discipline of Hennings, from its files and notify Hennings in writing that this has been done and that the unlawful discipline will not be the basis for any adverse action against her in the future. *Sterling Sugars, Inc.*, 261 NLRB 472 (1982).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.²

ORDER

The Respondent, Kitsap Tenant Support Services, Inc, Bremerton and Port Angeles, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively by delaying bargaining for 4 months.

(b) Maintaining a rule whereby former employees are prohibited from revealing client information or confidential matters learned while in the employ of the agency.

(c) Disciplining or demoting employees for engaging in union activities.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Upon request, meet and bargain with the Union as the exclusive collective-bargaining representative of its employees in the appropriate bargaining unit described below:

5 All full-time and regular part-time employees working for Respondent as Direct Service Staff (DSS) or Head of Households (HOHs) in Respondent's Intensive Tenant Support Program (ITS) and Direct Service (DSS) working in Respondent's Supported Living Lite Program (SLI lite Programs), including such programs in Respondent's d/b/a, Olympic Peninsula Supported Living (OPSL) operations, located in or about Kitsap County, Port Angeles, and Port Townsend, Washington; excluding employees working in
10 the Homecare division, Head of Households (HOHs) and Direct Service Staff (DSS) working in the Community Protection Program (CP Program) because they are guards as defined by the Act, and all other guards and supervisors as defined by the Act.

15 with respect to rates of pay, hours of employment, and other terms and conditions, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Within 14 days from the date of this Order, offer Lisa Hennings full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without
20 prejudice to her seniority or any other rights or privileges previously enjoyed but for her unlawful demotion.

(c) Make Hennings whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of the
25 decision.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discipline of Hennings, and within 3 days thereafter notify her in writing that this has been done and that the discipline will not be used against her in any way.

30 (e) Within 14 days after service by the Region, post at its facilities in Bremerton and Port Angeles, Washington, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are
35 customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these
40 proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

all current employees and former employees employed by the Respondent at any time since February 16, 2012.

- 5 (f) Within 21 days after service by the Region, file with the Regional Director for Region 19, a sworn certification of a responsible official on a form provided by Region 19 attesting to the steps the Respondent has taken to comply herewith.

Dated, Washington, D.C. June 4, 2014

10

Jay R. Pollack
Administrative Law Judge

15

APPENDIX**NOTICE TO EMPLOYEES**

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively by delaying bargaining for 4 months.

WE WILL NOT maintain a rule which prohibits former employees from discussing matters learned while employed by us.

WE WILL NOT discipline and/or demote employees because of their union activities.

WE WILL NOT make reference to the permanently removed materials in response to any inquiry from any employer, employment agency, unemployment insurance office, or reference seeker and we will not use the permanently removed material against this employee.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL upon request, meet and bargain with the Union as the exclusive collective-bargaining representative of our employees in the appropriate bargaining unit described below:

All full-time and regular part-time employees working for Respondent as Direct Service Staff (DSS) or Head of Households (HOHs) in Respondent's Intensive Tenant Support Program (ITS) and Direct Service (DSS) working in Respondent's Supported Living Lite Program (SLI lite Programs), including such programs in Respondent's d/b/a, Olympic Peninsula Supported Living (OPSL) operations, located in or about Kitsap County, Port Angeles, and Port Townsend, Washington; excluding employees working in the Homecare division, Head of Households (HOHs) and Direct Service Staff (DSS) working in the Community Protection Program (CP Program) because they are guards as defined by the Act, and all other guards and supervisors as defined by the Act

with respect to rates of pay, hours of employment, and other terms and conditions, and if an understanding is reached, embody such understanding in a signed agreement.

WE WILL make Lisa Hennings whole for her loss of earnings, if any, for unlawful discipline and demotion, with interest.

WE WILL remove from our files any reference to the unlawful discipline of Hennings and

KITSAP TENANT SUPPORT SERVICES, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

915 2nd Avenue, Room 2948, Seattle, WA 98174-1078
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/19-CA-074715 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (206) 220-6284.

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Kitsap Tenant Support Services, Inc. and Washington Federation of State Employees, American Federation of State, County and Municipal Employees, Council 28, AFL-CIO. Cases 19-CA-074715, 19-CA-079006, 19-CA-082869, 19-CA-086006, 19-CA-088935, 19-CA-088938, 19-CA-090108, 19-CA-096118 and 19-CA-099659

May 31, 2018

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS PEARCE
AND MCFERRAN

On June 4, 2014, Administrative Law Judge Jay R. Pollack issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Charging Party adopted the General Counsel's exceptions and supporting brief as its exceptions and brief. The Respondent filed an answering brief, and the General Counsel filed a reply brief. The Respondent also filed cross-exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs and has decided to adopt the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.¹

¹ We shall modify the judge's conclusions of law and substitute a new remedy, order, and notice to conform to the violations found.

On April 29, 2013, the Respondent filed a motion to dismiss the second amended complaint, asserting that former Acting General Counsel Lafe Solomon did not properly hold the position of General Counsel on March 27, 2013, when the second amended complaint issued. The Respondent argued that Solomon's appointment was invalid under the Federal Vacancies Reform Act (FVRA), 5 U.S.C. §§ 3345 et seq. On September 6, 2013, Judge Pollack denied that motion. Subsequently, in *NLRB v. SW General, Inc. d/b/a Southwest Ambulance*, 137 S. Ct. 929 (2017), the Supreme Court held that under the FVRA, Solomon's authority to take action as Acting General Counsel ceased on January 5, 2011, when President Obama nominated him to be General Counsel. However, we find that subsequent events have rendered moot the Respondent's argument that Solomon's lack of authority after his nomination precludes further litigation in this matter. Specifically, on April 14, 2017, General Counsel Richard F. Griffin, Jr. issued a Notice of Ratification in this case that states, in relevant part, as follows:

The prosecution of this case commenced under the authority of Acting General Counsel Lafe E. Solomon during the period after his nomination on January 5, 2011, while his nomination was pending with the Senate, and before my confirmation on November 4, 2013.

Introduction

The Respondent provides residential support services to developmentally disabled individuals. In November 2011, the Union began an organizing campaign to represent employees who provide caregiving services to these disabled clients at several of the Respondent's residential programs. On December 20, 2011, the Union filed a representation petition seeking an election in a unit consisting of those employees. On March 15, 2012, the Union won the election. On March 23, 2012, the Board certified the Union as the representative of the Respondent's Direct Service Staff and Head of Households (HOHs).

This case involves multiple allegations of unfair labor practices involving the Respondent's conduct during collective-bargaining negotiations with the Union, changes in the Respondent's disciplinary practices following the start of the union organizing campaign and, subsequently, the Union's certification, and disciplinary actions taken by the Respondent against employees who

The United States Court of Appeals for District of Columbia Circuit recently held that Acting General Counsel Solomon's authority under the Federal Vacancies Reform Act (FVRA), 5 U.S.C. §§ 3345 et seq., ceased on January 5, 2011, when the President nominated Mr. Solomon for the position of General Counsel. *SW General, Inc. v. NLRB*, 796 F.3d 67, 2015 WL 4666487 (D.C. Cir. Aug. 7, 2015). The Court found that complaints issued while Mr. Solomon's nomination was pending were unauthorized and that it was uncertain whether a lawfully-serving General Counsel or Acting General Counsel would have exercised discretion to prosecute the cases. *Id.* at *10.

I was confirmed as General Counsel on November 4, 2013. After appropriate review and consultation with my staff, I have decided that the issuance of the complaint in this case and its continued prosecution are a proper exercise of the General Counsel's broad and unreviewable discretion under Section 3(d) of the Act.

My action does not reflect an agreement with the appellate court ruling in *SW General*. Rather, my decision is a practical response aimed at facilitating the timely resolution of the charges that I have found to be meritorious while the issues raised by *SW General* are being resolved. Congress provided the option of ratification by expressly exempting "the General Counsel of the National Labor Relations Board" from the FVRA provisions that would otherwise preclude the ratification of certain actions of other persons found to have served in violation of the FVRA. *Id.* at *9 (citing 5 U.S.C. § 3348(e)(1)).

For the foregoing reasons, I hereby ratify the issuance and continued prosecution of the complaint.

In view of the independent decision of General Counsel Griffin to continue prosecution in this matter, we reject as moot any challenge to the actions taken by Solomon as Acting General Counsel after his nomination on January 5, 2011.

In its motion to dismiss, the Respondent also challenged the authority of Regional Director Ronald K. Hooks in this case, asserting that Regional Director Hooks was appointed on January 6, 2012. The assertion is incorrect. Although Regional Director Hooks' appointment was announced on January 6, 2012, the Board approved his appointment on December 22, 2011, at which time it had a quorum.

supported the Union. The judge found merit in some of the complaint allegations, dismissed some, and failed to rule on a number of others. As explained below, we find that the Respondent violated the National Labor Relations Act by (1) failing to meet with the Union at reasonable times during collective bargaining; failing to furnish, or delaying in furnishing, the Union with relevant information; and engaging in overall-bad faith bargaining; (2) discharging, demoting, placing on administrative leave, and otherwise disciplining employees because they supported the Union; and (3) more strictly enforcing its disciplinary rules in retaliation for employees' union activities and support. Finally, as explained below, we sever and retain for further consideration complaint allegations that the Respondent unlawfully maintained seven employee handbook rules.

I. 8(A)(5) ALLEGATIONS

A. Facts

On April 23, 2012,² the Union's lead negotiator, Sarah Clifthorne, sent Gary Lofland, the Respondent's lead negotiator, an email proposing three initial bargaining sessions on May 30 and 31, June 5 and 6, and June 26–28. As of May 14, Lofland had yet to respond. That day, Clifthorne emailed Lofland, requested a response concerning the Union's proposed bargaining dates, and informed Lofland that the Union could no longer meet on May 30 and 31. By May 21, Lofland still had not responded. Clifthorne emailed Lofland again on May 21, requested a response, and reminded Lofland that she had also left messages with his receptionist. Lofland responded that day by email, blaming his delay on "being out of the office."³ Lofland proposed that the parties set one initial meeting, on either June 5 or 6, and requested that the Union provide a written contract proposal at this first meeting.

On May 22, Clifthorne replied that the Union was available to meet on June 5 and 6. Clifthorne reported that the Union had selected five employees to participate in contract negotiations and requested that the Respondent grant the employees unpaid leave on June 4 "to prepare for our negotiations."⁴ On June 1, Clifthorne sent Lofland the Union's first information request.⁵

That same day, Lofland notified Clifthorne that the Respondent could no longer meet on June 5 or 6. Remarkably, Lofland blamed the Union for its "delay in responding to the available dates" and said those dates were "not realistic," claiming that the Union failed to timely conduct training for bargaining team members, submit an information request, and develop a written proposal. Clifthorne and employee Gary Martell, one of the Union's employee bargaining representatives, testified without contradiction that the Union completed its training session for employee bargaining representatives on June 4, as scheduled.

On June 5, Clifthorne proposed meeting on multiple dates in June, July, and August. In total, the Union proposed 26 potential bargaining dates. On June 8, Lofland agreed to meet on July 13 and stated that the Respondent would only agree to additional dates after completing that first bargaining session. Lofland asserted that the "normal ebbs and flow of business and life preclude[d]" him from meeting the Union's "perceived needs and wants" to meet at an earlier date. The Union agreed to meet on July 13 and continued to request, without success, that the Respondent agree to additional bargaining dates in July and August.

On June 11, Lofland responded to the Union's June 1 information request, producing some of the Union's requested information and stating that the "response will be supplemented at a later time." The Respondent does not dispute the General Counsel's assertion that as of June 11, the Respondent had not furnished the Union the following: (1) employee schedules, house name, and shift information; (2) employee transfers, promotions, and movement in and out of the unit since December 11, 2011; (3) job descriptions and memos about job expectations; (4) memos or written materials on policies and procedures, rules, and guidelines for employees; (5) history of wages and raises for employees for a 5-year period; (6) training programs and requirements for staff, in-

"house name" [employees are assigned to work at various client residences, i.e., houses], and shift information; (5) employees' paid time off accrual rates, vacation, and personal leave; (6) overtime paid to employees; (7) employee transfers, promotions, and movements in and out of the unit since December 11, 2011; (8) job descriptions and memos about job expectations; (9) a current employee handbook; (10) memos or written materials on policies and procedures, rules, and guidelines for employees; (11) current disciplinary procedures, process, and forms; (12) job evaluations, including process and forms used; (13) benefit plans, including health care, dental, vision, and 401(k), including the number of employees enrolled in each program; (14) history of health, dental, and vision insurance cost for employees/employer for a five-year period; (15) history of wages and raises for employees for a five-year period; (16) training programs and requirements for staff, including all training records since December 1, 2011; and (17) all payments received from the State.

² All subsequent dates are in 2012 unless otherwise indicated.

³ According to Clifthorne's May 14 email, Lofland had been on vacation, but the vacation ended sometime before May 14.

⁴ During late May and early June, the parties discussed issues surrounding these five employees' participation in bargaining, which the parties ultimately resolved.

⁵ Although this information request is dated May 22, the Union submitted this request to the Respondent on June 1. In this request, the Union requested copies of the following: (1) an organizational chart; (2) a "current employee list with job class," work locations, dates of hire, and pay levels; (3) a "list of job classes"; (4) employee schedules,

KITSAP TENANT SUPPORT SERVICES, INC.

3

cluding all training records since December 1, 2011; and (7) all payments received from the State. Concerning the request for payments received from the State, the Respondent asserted that it had no obligation to provide that information.

On July 13, the parties met for the first time. At this meeting, scheduled to last the entire day,⁶ the Union spent the first one and one-half hours walking through its contract proposal, which the Union had furnished to the Respondent a week earlier. The proposal included a “just cause” provision for employee discipline, a union security provision, dues checkoff, a 3-step grievance procedure (followed by arbitration as a final option if the grievance procedure was unsuccessful), a progressive disciplinary policy, and a limited management-rights clause. The Union proposed a starting wage rate for Direct Service Staff of \$12.09 an hour and an HOH starting wage rate of \$14.09 an hour, with gradual annual increases for both. The Respondent made no proposals and had no questions about the Union’s proposed contract. Clifthorne testified that after a 20-minute caucus, the Respondent announced that it “wasn’t prepared to talk about [the Union’s proposal] further” and declared that they “were done for the day.” Clifthorne further testified that following another caucus, the parties reconvened at 11:35 a.m., scheduled meetings for August 6 and 15, and ended bargaining for the day.

On July 17, the Union submitted a second information request to the Respondent, seeking “documents and information regarding [Kitsap’s] job descriptions and recruitment postings for Head of Household (HOH) positions.” The Union explained that although the Respondent had indicated that the HOH job description could be found in the employee handbook, which the Respondent provided to the Union on June 11, the handbook did not in fact include the HOH job description. The Union also reported that it had “recently [been] made aware that [Kitsap had] changed some of the language and job requirements for HOH’s,” which were reflected in HOH job postings. Accordingly, the Union requested (1) “[t]rue and accurate copies of any and all HOH and direct service staff job descriptions that [Kitsap] has created and used within the last twelve (12) calendar months. The job postings should indicate the position that was open, any work locations, and the date of the job posting announcement,” and (2) “[a]ny and all memos created by [Kitsap] regarding HOH and direct service staff job descriptions and job duties within the last twelve (12) calendar months.”

⁶ The parties had earlier agreed to all-day (9 a.m. to 5 p.m.) bargaining sessions.

On Monday, August 6, the parties met for the second time. They discussed the Respondent’s first proposed contract, which the Respondent had provided to the Union the prior Friday, August 3. The proposal included a broad management-rights clause, at-will employment, no union security, a grievance procedure without arbitration,⁷ and a discretionary disciplinary procedure.⁸ The Respondent announced that it intended to eliminate the Head of Household position and replace it with the supervisory position of Household Manager. The Respondent proposed a Direct Service Staff starting wage rate of \$10.09 an hour and a \$10.25 an hour starting wage rate for night-shift employees. The wage proposal also provided that the Respondent “reserves the right to reduce the rates paid if the Department of Social & Health Services reduces the benchmark rate, the Legislature reduces funding, or changes to health care laws and contributions occur. The Employer shall provide at least thirty (30) days notice to the Union of such change.” Because the Respondent proposed eliminating the HOH position, it proposed no wage rates for that position. The Respondent ended the bargaining session at noon. The parties agreed to meet on September 17. In the interim, on August 13, citing a State audit, Lofland canceled the parties’ previously agreed-upon August 15 meeting.

On September 17, the parties met for the third time. Prior to that meeting, the Union provided the Respondent with a modified proposal. The parties do not assert, nor does the record demonstrate, that this modified proposal contained any meaningful changes from the Union’s earlier proposal. The judge found that the Respondent “refused to discuss certain proposals” during the meeting. Clifthorne testified that the Respondent refused to discuss union security, seniority, and “many” additional issues. Discussions that day ended shortly before noon.

On October 12, in response to the Union’s June 1 and July 17 information requests, the Respondent provided the Union with the requested list of HOH job duties. The Respondent did not provide the Union a job description

⁷ The Respondent proposed that, following exhaustion of a 3-step review procedure before human resource officers and other managers, the Union “may file a civil complaint in the Superior Court of Kitsap County.”

⁸ The proposal regarding discipline provided that “progressive and corrective discipline may be appropriate” and “[d]isciplinary actions or measures may include” initial verbal reprimand, initial written reprimand, final written reprimand, suspension without pay, and discharge. The proposal further provided that “[t]he step to be utilized and the degree of discipline to be imposed is solely within the judgment and discretion of [Kitsap].”

for Direct Service Staff employees or the requested memos and job postings concerning the HOH position.⁹

On October 16, the parties met for the fourth time.¹⁰ Four days earlier, the Respondent had provided the Union with modifications to its proposed contract. The parties do not assert, nor does the record demonstrate, that these modifications contained any meaningful changes except for two changes to the management-rights clause, which added that the Respondent had the right to “transfer bargaining unit members” and “assign bargaining unit work to supervisors.”¹¹ Clifthorne testified that the par-

⁹ The General Counsel does not contend that the Respondent’s failure to provide a job description for Direct Service Staff employees violated the Act.

¹⁰ The judge mistakenly found that the parties’ next bargaining session was on November 26.

¹¹ As modified, the Respondent’s proposed management-rights clause provided as follows:

[T]he Employer reserves and retains, solely and exclusively, all of the inherent rights, functions, and prerogatives of management. The following shall be deemed representative and characteristic of the customary and usual rights which are retained by the Employer but shall not be deemed to exclude any and all other management rights: (1) The right to hire employees; (2) The right to assign/reassign or schedule the date, time, hours, location, and duties of work; (3) The right to promote, demote, suspend, discipline, layoff, or discharge employees; (4) The right to maintain order and efficiency; (5) The right to determine the number of employees assigned to any shift and to adjust staffing plans, eliminate, or add units; (6) The right to assign the type of equipment to be used by employees in the performance of their work duties; (7) The right to subcontract work; (8) The right to sell all or part of the business operations; (9) The right to grant and/or schedule time off, including annual leave; (10) The right to cease all or part of business operations; (11) The right to make such reasonable rules, regulations, deployment plan and policy and operational manual adjustments as it may from time to time deem best for the purposes of maintaining order, safety, and effective operation of its business and/or compliance with the contractual and regulatory requirements of its customers; (12) The right to increase compensation and/or benefits of employees above that minimally required under the terms of this Agreement; (13) The right to transfer bargaining unit members; (14) The right to choose, provide, locate, and relocate employees; (15) The right to assign bargaining unit work to supervisors; (16) The right to enforce the Employer’s Policies and Operations Manuals; (17) The right to develop, implement, and enforce quality assurance programs and standards of care; (18) The right to make employee assignments and to designate employee staffing compositions; (19) The right to design, submit, negotiate, and implement contracts; and (20) The right to change providers and/or administrators for the benefit programs described in this Agreement.

The management-rights clause also provided that, “[e]xcept when it can be reasonably shown that conduct or action by the Company is in violation of a specific provision of this Agreement, the exercise by the Company of its rights to operate and manage business and the affairs of the Company, to select and direct the working forces and to control and direct the use of its equipment, facilities and properties shall not be subject to the grievance procedure or to dispute resolution procedure.” Finally, the management-rights clause stated: “Recognizing that [Kitsap] is subject to fluctuations in reimbursement rates which are determined by the Washington Department of Social and Health Ser-

ties discussed a variety of topics, including management rights, at-will employment, layoffs and recall rights, employee morale, employees’ access to their personnel files, cell phone usage, union security, and automatic payroll deduction of union dues. Clifthorne requested bargaining dates in November. On October 25, Lofland responded: “Dealing with a torn Achilles tendon, be to you soon.” On October 29, Clifthorne again requested that the parties set future bargaining dates.

On October 29, the Union submitted a third information request to the Respondent for (1) a job description for the Respondent’s proposed Household Manager position, (2) total ISS dollars [i.e., payments received from the State] paid to bargaining-unit members per month, including overtime since March 2012,¹² (3) total reimbursement for mileage costs paid to bargaining-unit members per month since March 2012, (4) the total amount Kitsap paid for taxes and benefits for bargaining-unit members per month since March 2012, and (5) the total amount Kitsap paid for mileage reimbursement for bargaining-unit members for client transportation per month since March 2012.

On November 12, Lofland responded to Clifthorne’s requests for additional bargaining dates, blaming his delay on “miscommunication with my assistant” and stating that he was available on November 19, 20, or 26 and December 17, 18, or 19. Lofland stated that the Respondent could not meet on consecutive days, however, because it would be burdensome on management.

On November 20, Lofland responded to the Union’s October 29 information request. The Respondent provided a copy of the job description for its proposed House Manager position and both reimbursement figures for employee mileage costs. The Respondent refused, however, to provide the Union with ISS dollars paid to bargaining-unit members. Lofland asserted that the Respondent was “not obligated to provide financial information . . . because [Kitsap] does not plead inability to pay.”¹³

On November 26, the parties met for the fifth time. Contrary to the Respondent’s earlier announcement that it intended to eliminate the HOH position, the parties

vices based upon funding by Washington Legislature, [Kitsap] expressly reserves the right to change and modify compensation (wages and benefits) resulting from or caused by Department or Legislative action subject only to providing the Union with 30 day advance notice of the change.”

¹² As noted above, the Union first requested this state payment information on June 1.

¹³ The Respondent also refused to provide the information regarding unit employee taxes and benefits paid by Kitsap. Lofland asserted that he did not believe this information was relevant. The General Counsel does not contend that this refusal violated the Act.

signed a tentative agreement to include the HOH position in the unit. They also agreed to next meet on December 18. On December 17, Lofland canceled that meeting because he was “feeling ill.” Lofland said that he would contact Clifthorne later that week to schedule a January bargaining date. He did not do so.

On January 11, 2013, Clifthorne emailed Lofland and reported that the Union was available to meet “every day the last two weeks of January.” On January 25, 2013, Lofland explained that he had been “somewhat preoccupied” because two “close family members” were scheduled to have surgery the following week and because of preparations for the unfair labor practice (ULP) hearing, which was to begin on February 12, 2013. Lofland suggested the parties meet on February 27 or 28, 2013, or “in the event the ULP hearing is postponed . . . [on] another date.” On February 15, 2013, the judge rescheduled the hearing to begin in late May 2013.

On January 28, 2013, the Union accepted Lofland’s proposed February 27 date and requested additional earlier dates in February, given the hearing postponement. The next day, Lofland stated that he was no longer available to meet in late February because he “apparently [had] been summoned for jury duty during that period.” On February 4, 2013, Lofland clarified that he was to report for jury duty from February 25 through March 8. The parties agreed to meet on February 21, March 11, and March 12, 2013. Clifthorne later canceled the February 21 meeting.

On March 11 and 12, 2013, the parties met for the sixth and seventh times. Clifthorne testified without contradiction that the parties reached tentative agreements on hiring, seniority, layoff and recall procedures, employee training and development, performance evaluations, access to personnel files, employee privacy, reasonable accommodations, tools, equipment and supplies, a union-management committee, a drug and alcohol policy, employee cell phone use, and time clocks. The parties had yet to reach agreement on many significant issues, including union security, dues checkoff, hours of work, overtime, discipline, leave, holidays, transportation, a grievance procedure, benefits, compensation, the scope of a management-rights clause, and whether discharge should be for cause or at will.

The parties’ final bargaining sessions were on April 4 and 5, 2013. The record reflects no positive movement on the outstanding bargaining issues. A week later, the Respondent reneged on its tentative agreement to include the HOH position in the unit. In an April 12 email, Lofland stated that “[t]he Employer’s position is that it will eliminate the position of HOH and create a supervisory position of Household Manager. That proposal re-

mains, as it always has been, subject to negotiations and compromise.”

The parties engaged in additional bargaining sessions attended by a federal mediator from May through December 2013. The parties did not reach a collective-bargaining agreement at the conclusion of those sessions.

B. Analysis

1. The Respondent’s refusal to meet and bargain at reasonable times

The complaint alleges that the Respondent violated Section 8(a)(5) of the Act by failing and refusing to meet with the Union at reasonable times and systematically delaying the bargaining process. For the following reasons, we affirm the judge’s conclusion that the Respondent violated the Act as alleged.

Section 8(a)(5) of the Act makes it an unfair labor practice for an employer “to refuse to bargain collectively with the representative of his employees.” In relevant part, Section 8(d) of the Act defines the phrase “to bargain collectively” as “the performance of the mutual obligation of the employer and the representative of the employees *to meet at reasonable times* and confer in good faith with respect to wages, hours, and other terms and conditions of employment . . .” (emphasis added). Nearly 70 years ago, the Board fleshed out this statutory mandate, explaining that

[t]he obligation to bargain collectively surely encompasses the affirmative duty to make expeditious and prompt arrangements, within reason, for meeting and conferring. Agreement is stifled at its source if opportunity is not accorded for discussion or so delayed as to invite or prolong unrest or suspicion. It is not unreasonable to expect of a party to collective bargaining that he display a degree of diligence and promptness in arranging for collective bargaining sessions when they are requested, and in the elimination of obstacles thereto, comparable to that which he would display in his other business affairs of importance.

J. H. Rutter-Rex Manufacturing Co., Inc., 86 NLRB 470, 506 (1949).

Beginning on April 23, the Union repeatedly requested initial bargaining dates without a response from the Respondent. On May 21, the Respondent finally agreed to meet on either June 5 or 6. However, the Respondent then rescinded its offer on June 1. Incredibly, the Respondent blamed this cancellation on the Union, falsely citing the Union’s “delay in responding to available dates.” It was the Respondent—not the Union—that waited almost one full month before agreeing to a date for an initial bargaining session, which it then canceled.

The Respondent's additional stated reasons for canceling this initial session—the Union's purported failure to train employee bargaining representatives, request information, and develop a written contract proposal—were equally baseless. On May 22, the Union reported to the Respondent that it intended to train its bargaining representatives on June 4, and the Union did just that. Moreover, neither the submission of an information request nor the preparation of a contract proposal is a valid prerequisite for an initial bargaining session.

In June, the Union continued to propose potential bargaining dates and questioned the Respondent's refusal to schedule more than one bargaining date at a time. The Respondent, however, again agreed to just one date, July 13. Accordingly, almost 12 weeks elapsed from the Union's first request for bargaining dates (on April 23) to the date the parties met for the first time, July 13.

The Respondent's dilatory tactics persisted. Although the parties had agreed that bargaining sessions would last from 9 a.m. to 5 p.m., the Respondent ended the parties' first bargaining session before noon, claiming that it was unprepared to discuss any element of the Union's initial contract proposal even though the Union had furnished that proposal to the Respondent a week earlier. At the second session on August 6, the Respondent again ended negotiations before noon. At the parties' third session on September 17, the Respondent refused to discuss a number of proposals and again prematurely ended that session before noon.

The parties met on October 16 and November 26, but the Respondent canceled the December 18 session with just one day's notice. Although the Respondent promised that it would reach out to the Union to reschedule that session, it did not do so. Only the Union made an effort to schedule additional sessions. On January 25, 2013, more than 5 weeks after canceling the December 18 session, the Respondent finally communicated with the Union and proposed to meet on February 21. Because of the Respondent's continued dilatory conduct, almost 3 months elapsed between its proposed February 21, 2013 session and the parties' previous meeting on November 26.

On these facts, we find that the Respondent violated Section 8(a)(5) by failing and refusing to meet with the Union at reasonable times to engage in collective bargaining. See *Fruehauf Trailer Services*, 335 NLRB 393, 393 (2001) (finding that employer failed to meet at reasonable times where "it took two letters from the [u]nion and the passage of almost 3 months before the [employer] met with the [u]nion for an initial bargaining session," and when the parties finally met, the employer did not "offer[] any substantive response to the [u]nion's

initial proposal"); *Calex Corp.*, 322 NLRB 977, 978 (1997) (employer exhibited an unlawful "pattern of delay" where, even though the parties had 19 bargaining sessions in 15 months following union certification, the employer canceled a number of bargaining sessions because of various asserted scheduling problems), *enfd.* 144 F.3d 904 (6th Cir. 1998); *Bryant & Stratton Business Institute*, 321 NLRB 1007, 1042 (1996) (finding that employer failed to meet at reasonable times where it would only bargain approximately 1 day per month, limited the time available for bargaining by insisting on meeting in the late afternoon and then leaving early to catch a flight, and was generally reluctant to schedule multiple bargaining dates in advance), *enfd.* 140 F.3d 169 (2d Cir. 1998).¹⁴

2. The Respondent's failures to provide, and delays in providing, requested relevant information

The complaint includes multiple allegations that the Respondent violated Section 8(a)(5) by failing to provide, and unreasonably delaying in providing, the Union with requested relevant information. The judge did not address any of these allegations, and the General Counsel has excepted to his failure to do so with respect to certain requests. Consistent with the General Counsel's exceptions, we find the following violations.

On June 1, the Union submitted its first information request.¹⁵ On June 11, the Respondent provided some of the requested information. Left unfurnished was the following information, the relevance of which the Respondent does not question (except for item 7): (1) employee schedules, house name, and shift information; (2) employee transfers, promotions, and movement in and out of the unit since December 11, 2011; (3) job descriptions and memos about job expectations; (4) memos or written materials on policies and procedures, rules, and guidelines for employees; (5) history of wages and raises for employees for a 5-year period; (6) training programs and requirements for staff, including all training records since December 1, 2011; and (7) all payments received from the State. The General Counsel contends that the Re-

¹⁴ It is no defense that the Respondent's chosen lead negotiator, Lofland, canceled bargaining sessions or was otherwise unavailable to meet due to personal and business-related matters, i.e., a vacation, an Achilles tendon injury, miscommunication with his assistant, jury duty, his health concerns and those of his relatives, a State audit, or his preparation for an unfair labor practice hearing. The Board has consistently rejected this "busy negotiator defense." See, e.g., *Calex Corp.*, 322 NLRB at 978 ("[I]t is well settled that an employer's chosen negotiator is its agent for the purposes of collective bargaining, and that if the negotiator causes delays in the negotiating process, the employer must bear the consequences.").

¹⁵ The complaint mistakenly referred to this as the May 22 information request.

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spondent violated Section 8(a)(5) by delaying in providing items 1–6 and by failing to provide item 7. For the following reasons, we agree.

The Respondent states that it provided the information requested in items 1–6 on “June 15, July 3, August 3, and September 14.” Accordingly, by its own admission, the Respondent delayed in providing some of this information for 10 ½ weeks (June 1 to August 3), and it delayed in providing other of this information for 16 ½ weeks (June 1 to September 14). The Respondent offers no explanation for these delays. We find that these delays were unreasonable and unlawful. See, e.g., *Civil Service Employees Assn.*, 311 NLRB 6, 9 (1993) (10-week delay unlawful); *Montgomery Ward & Co.*, 234 NLRB 588, 589–590 (1978) (3-month delay unlawful).

Turning to the Union’s request for information regarding payments received from the State, we find that the Respondent violated Section 8(a)(5) by failing to provide this information to the Union.¹⁶ The Respondent argues that it has no obligation to provide this financial information because a presumption of relevancy does not apply “to a request for financial structure or condition.” The Respondent is correct that “generally, an employer is not obligated to open its financial records to a union unless the employer has claimed an inability to pay.” *Caldwell Mfg. Co.*, 346 NLRB 1159, 1160 (2006). The Respondent did not assert inability to pay. However, the Union did not seek general access to the Respondent’s financial records. It only asked for information regarding payments the Respondent received from the State of Washington.

Where an employer adopts bargaining positions that make certain financial information relevant, the union is entitled to that information in order “to evaluate and verify the [employer’s] assertions and develop its own bargaining positions.” *Id.* The Respondent’s proposed management-rights clause and compensation proposal stated that because of “fluctuations” or “reduc[tions]” in State reimbursement rates, the Respondent would reserve the right to modify compensation and benefits on 30 days’ notice to the Union. Moreover, the parties’ competing proposals regarding compensation suggested that they disagreed on whether current appropriation levels allowed for an increase in existing wage rates. In July, the Union proposed wage rates of \$12.09/hour and \$14.09/hour for Direct Service Staff and HOHs, respectively. In August, the Respondent proposed maintaining

the Direct Service Staff wage rate at \$10.09/hour. We find that the information the Union requested regarding payments received from the State would have aided the Union in determining whether the Respondent had any room for potential movement on wage rates—a crucially important bargaining subject—based on current appropriations.¹⁷

On July 17, the Union requested job descriptions, memos, and job postings concerning the Respondent’s HOH position. The Respondent does not question the relevance of this information. On October 12, the Respondent provided the Union with a list of HOH job duties, without any explanation for the delay. We find that this almost 3-month delay in providing this information violated Section 8(a)(5). See *Montgomery Ward & Co.*, 234 NLRB at 589–590 (3-month delay unlawful). The Respondent entirely failed to provide the Union with copies of memos and job postings concerning the HOH position. We find that the failure to provide this relevant information also violated Section 8(a)(5).¹⁸

3. The Respondent’s overall bad-faith bargaining

The complaint alleges, and the General Counsel argues in his exceptions, that the Respondent’s conduct, viewed in its entirety, demonstrates that the Respondent was bargaining without a sincere desire to reach a collective-bargaining agreement, and therefore the Respondent engaged in overall bad-faith bargaining. The judge did not address this complaint allegation. For the following reasons, we agree with the General Counsel and find that the totality of the Respondent’s conduct during negotia-

¹⁷ We need not pass on whether the Respondent violated the Act by its refusal to furnish information regarding payments received from the State in response to the Union’s June 1 request for that information, before the Respondent had given the Union its initial contract proposal (on August 3). The Union asked for the same information again on October 29, by which time the Respondent had clearly linked its bargaining positions to State reimbursement rates. The Respondent’s refusal to furnish the information in response to the October 29 request was clearly unlawful under *Caldwell*, supra. The precise date of the violation has no effect on the remedy.

¹⁸ We reject the General Counsel’s argument that the Respondent further violated Sec. 8(a)(5) by failing to sufficiently explain the meaning of two terms it used during negotiations. First, on May 21, Lofland stated to the Union that the Respondent’s negotiating team would need final approval from “the Board” before the parties could reach a full and complete agreement. The General Counsel asserts that the Respondent refused to identify the “Board.” In a June 1 letter to the Union, however, Lofland explained that the “Board” referred to “the Board of Directors of [Kitsap.]” Second, in its compensation proposal, the Respondent stated that current employees, except those working night shifts, would be “red circled.” Although the Respondent’s proposal did not define the term “red circled,” the General Counsel does not dispute the Respondent’s assertion that Clifhorne, as an experienced negotiator, would have understood that term to mean that those employees would “continue to receive the same rate of wages.”

¹⁶ Again, the Union repeated its request for this information on October 29. At that time, the Union clarified that it sought “total ISS dollars [a term used to describe payments received from the State] paid to bargaining unit members per month, including overtime since March 2012.” The Respondent again refused to provide this information.

tions demonstrates that it engaged in bad-faith bargaining.

Section 8(d) of the Act defines the duty to bargain collectively as “the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment . . . but such obligation does not compel either party to agree to a proposal or require the making of a concession.” Good-faith bargaining “presupposes a desire to reach ultimate agreement, to enter into a collective bargaining contract.” *NLRB v. Insurance Agents’ Union*, 361 U.S. 477, 485 (1960). In determining whether a party has violated its statutory duty to bargain in good faith, the Board “looks to the totality of the circumstances in which the bargaining took place.” *Overnite Transportation Co.*, 296 NLRB 669, 671 (1989), *enfd.* 938 F.2d 815 (7th Cir. 1991). “From the context of an employer’s total conduct, it must be decided whether the employer is engaging in hard but lawful bargaining to achieve a contract that it considers desirable or is unlawfully endeavoring to frustrate the possibility of arriving at any agreement.” *Public Service Co. of Oklahoma (PSO)*, 334 NLRB 487, 487 (2001), *enfd.* 318 F.3d 1173 (10th Cir. 2003).

As discussed in greater detail above, we find that the Respondent exhibited bad faith by engaging in dilatory tactics, failing to provide the Union with requested relevant information, and delaying in providing the Union with relevant information. The Respondent’s dilatory tactics began almost immediately after the Union’s certification and persisted throughout negotiations. The information the Respondent unreasonably delayed in furnishing to the Union involved matters critical to the Union’s ability to formulate proposals and engage in meaningful bargaining, including unit employees’ wage histories, schedules, work history, training, employee job descriptions, the Respondent’s rules and policies, and information about the HOH position. Moreover, the Respondent’s outright refusal to provide information concerning State payments impacted the Union’s ability to meaningfully bargain over wages and benefits, perhaps the most critical of all mandatory subjects of bargaining. The Board has found that such unlawful conduct is evidence of an employer’s overall bad faith. See, e.g., *Regency Service Carts, Inc.*, 345 NLRB 671, 672–673 (2005).

The Respondent’s conduct concerning the HOH position is further evidence of its bad faith. It is well settled that “the withdrawal of a proposal by an employer without good cause is evidence of a lack of good faith bargaining by the employer in violation of Section 8(a)(5) of

the Act where the proposal has been tentatively agreed on.” *Valley Central Emergency Veterinary Hospital*, 349 NLRB 1126, 1127 (2007) (internal quotation omitted); see also *Driftwood Convalescent Hospital*, 312 NLRB 247, 252 (1993) (stating that when “an employer withdraws a bargaining proposal on which tentative agreement has been reached and, in its place, substitutes a regressive proposal, this conduct has the inevitable and foreseeable effect of obstructing and impeding the collective-bargaining process”), *enfd.* sub nom. *NLRB v. Valley West Health Care*, 67 F.3d 307 (9th Cir. 1995). The Respondent offered no explanation for its April 2013 decision to repudiate the parties’ tentative agreement the previous November to include the HOH position in the bargaining unit. Such regressive bargaining suggests the Respondent was not serious about coming to an agreement and would continue to walk back proposals so as to frustrate the Union and delay agreement. We find that this unexplained conduct concerning an issue so crucial to collective bargaining—the composition of the bargaining unit—is inconsistent with a sincere willingness to reach agreement.¹⁹

Finally, although we conclude that the conduct described above, without more, warrants a finding of overall bad-faith bargaining, we agree with the General Counsel that the Respondent’s bargaining proposals further demonstrate that the Respondent failed to bargain in good faith. The Board does not evaluate whether particular proposals are acceptable or unacceptable. See *NLRB v. American National Insurance Co.*, 343 U.S. 395, 403–404 (1952). However, the Board will examine proposals when appropriate and consider whether, on the basis of objective factors, such bargaining positions constitute evidence of bad-faith bargaining. *Reichhold Chemicals*, 288 NLRB 69, 69 (1988), *affd.* in relevant part 906 F.2d 719 (D.C. Cir. 1990), *cert. denied* 498 U.S. 1053 (1991). An inference of bad-faith bargaining is appropriate when the employer’s proposals, taken as a whole, would leave the union and the employees it represents with substantially fewer rights and less protection than provided by law without a contract. *Public Service Co. of Oklahoma (PSO)*, 334 NLRB at 487–488. Put somewhat differently, an inference of bad-faith bargaining is warranted when an employer’s proposals “would strip the [u]nion of any effective method of representing

¹⁹ The scope of the bargaining unit is a permissive subject of bargaining and cannot be modified by the employer without the consent of the union or the approval of the Board. See, e.g., *Solutia, Inc.*, 357 NLRB 58, 62 (2011), *enfd.* 699 F.3d 50 (1st Cir. 2012). The judge found, however, that the Respondent did not unlawfully insist on the removal of the HOH position from the unit because it did not insist on its position to the point of impasse. There are no exceptions to the judge’s finding.

its members . . . further excluding it from any participation in decisions affecting important conditions of employment . . . thus exposing the company's bad faith." *A-1 King Size Sandwiches, Inc.*, 265 NLRB 850, 859 (1982) (internal quotations omitted), *enfd.* 732 F.2d 872 (11th Cir. 1984), *cert. denied* 469 U.S. 1035 (1984). We recognize, of course, that under the Act neither the Board nor the courts may compel concessions or otherwise sit in judgment upon the substantive terms of collective-bargaining agreements. *American National Insurance Co.*, 343 U.S. at 403–404. Our examination of the Respondent's proposals is undertaken to determine, not their merits, but "whether in combination and by the manner proposed they evidence an intent not to reach agreement." *Coastal Electric Cooperative*, 311 NLRB 1126, 1127 (1993).

Considering these factors, we find that the Respondent's proposals evinced bad-faith bargaining. First, the Respondent sought to deny the Union any role in determining wages and benefits during the life of the contract. The compensation provision of the Respondent's final October contract proposal provided that the Respondent "reserves the right to reduce the rates paid if the Department of Social & Health Services reduces the benchmark rate, the Legislature reduces funding, or changes to health care laws and contributions occur." Under this proposal, the Union would be entitled only to *receive notice* of any wage rate changes, not to bargain over proposed changes in wage rates. This provision left no doubt that the Respondent sought to deny the Union any role in establishing wage rates during the life of the contract. The management-rights clause of the Respondent's final contract proposal repeated this language and clarified that the Respondent considered "compensation" to include "wages and benefits." The management-rights clause also provided that the Respondent had the "right to increase compensation and/or benefits of employees above that minimally required under the terms of this Agreement."

Second, by its proposals regarding discipline and discharge, the Respondent sought to retain unfettered discretion over those vitally important areas as well. The Respondent's final contract proposal provided for "at will" employment, with no limits on the Respondent's right to discharge unit employees (other than those limits imposed by law). Although the discipline provision in the Respondent's proposed final contract provided for a progressive disciplinary schedule, utilizing that schedule would be entirely at the discretion of the Respondent. The proposed contract provided that the Respondent "*may*" follow a progressive disciplinary schedule, and the "step to be utilized and the degree of discipline to be

imposed is [sic] *solely within the judgment and discretion of [Kitsap]*" (emphasis added). The Respondent's proposed management-rights clause similarly provided the Respondent with the "sole[] and exclusive[] . . . right[]" to "promote, demote, suspend, discipline, layoff, or discharge employees." The proposed management-rights clause also would have granted the Respondent the exclusive right to "make . . . reasonable rules, regulations, deployment plan and policy and operational manual adjustments" and to "enforce the Employer's policies and Operations Manual." This language would grant to the Respondent unilateral control over work rules, policies, and other regulations, which obviously also affect employee discipline.

Finally, the Respondent's proposed contract would exclude from the grievance procedure the Respondent's exercise of the extraordinarily broad discretion provided it under many of these proposed provisions. The Respondent's proposed management-rights clause provided that the rights established therein "shall not be subject to the grievance procedure or to dispute resolution procedure."²⁰ Accordingly, employees and the Union would be left with no avenue to challenge any of the Respondent's decisions with regard to the nearly exhaustive list of rights reserved to the Respondent under the management-rights clause. The Board has consistently found this factor to be an indicator of bad faith. See, e.g., *Regency Service Carts*, 345 NLRB at 675, 722 (where employer's management-rights clause was "extremely broad," employer exhibited bad faith by proposing that rights granted therein would not be "subject to the grievance procedure and/or arbitration").

These proposals of the Respondent would have required the Union "to cede substantially all of its representational function, and would have so damaged the Union's ability to function as the employees' bargaining representative that the Respondent could not seriously have expected meaningful collective bargaining." *Public Service Co. of Oklahoma (PSO)*, 334 NLRB at 489; see also *Regency Service Carts*, 345 NLRB at 672–676 (employer bargained in bad faith where it engaged in dilatory tactics, failed to timely respond to information requests, adhered to a proposed management-rights clause that left it with "unilateral control [] over virtually all significant terms and conditions of employment," and insisted on a

²⁰ The Respondent's proposed management-rights clause additionally grants the Respondent the exclusive right to control other significant terms and conditions of employment, including employees' work schedules; the subcontracting of work; the granting and scheduling of time off, including annual leave; the transfer and relocation of bargaining-unit members; and the assignment of bargaining-unit work to supervisors.

grievance and arbitration clause that excluded from arbitral review the employer's exercise of discretion under its proposed management-rights clause); *A-1 King Size Sandwiches, Inc.*, 265 NLRB at 858–859 (employer bargained in bad faith where it insisted on the unilateral right to set wage rates and “total control over virtually every significant aspect of the employment relationship,” including discipline and discharge, work rules and regulations, subcontracting, and the transferring of unit work). In sum, the Respondent's collective-bargaining proposals provide an additional basis for finding the Respondent's bad faith.

For all the reasons discussed above, we find that the Respondent violated Section 8(a)(5) by engaging in overall bad-faith bargaining.²¹

II. 8(A)(3) ALLEGATIONS

The complaint alleges that the Respondent violated Section 8(a)(3) of the Act through a variety of disciplinary actions involving five employees. The judge dismissed all these allegations except for three involving employee Lisa Hennings.²² For the reasons that follow, we adopt the judge's findings regarding the three violations involving Hennings, we adopt the judge's dismissal of certain 8(a)(3) allegations, and we reverse the judge and find certain additional 8(a)(3) violations as discussed below.²³

A. Bonnie Minor

1. Facts

As noted, the Union began its organizing campaign in November 2011. Union Organizer Timothy Tharp testified that the Union engaged in a preelection “blitz” during the first weekend of December 2011. As part of this blitz, the Union visited over 50 employees at their homes, solicited employee signatures for authorization cards, and held a meeting on Sunday, December 4 at a

local hotel. Tharp further testified that on December 14, the Union mailed employees a flyer, which included the names and photographs of several employees and identified these employees as members of the Union's organizing committee. The judge found that the Respondent learned of the union campaign in December 2011. General Manager Alan Frey, who played a significant role in all of the Respondent's allegedly unlawful disciplinary actions, testified that he learned of the campaign in November 2011. Frey also admitted seeing the union flyer “sometime [in the] middle of December.” The Respondent opposed the Union's organizational efforts. Beginning December 7, 2011, the Respondent held several mandatory employee meetings, where a consultant hired by the Respondent advocated against unionization.

The Respondent hired Minor in June 2008 and promoted her to an HOH position in late 2009. Minor was a member of the Union's organizing committee. Minor also attended union meetings, including the December 4 blitz meeting. Her picture was included on the union flyer. On December 1, 2011, Minor received a strongly positive performance evaluation.²⁴

In the fall of 2011, Minor and HOH Johnson Ezebrio volunteered to organize multiresidence Thanksgiving and Christmas parties. The Respondent does not dispute the General Counsel's claim that the Respondent has no set rules or guidelines for the planning of such parties. The Respondent's clients were responsible for contributing money for food and other party-related expenses. Prior to the Thanksgiving party, employees reported to Minor that some clients could not afford to participate in both parties. Minor decided to cancel the Christmas party. On December 7, 2011, Frey called Minor, told her she had no right to cancel the party, and instructed her to reschedule the party, which she promptly did. Frey made no mention of discipline.

That same day, after Frey's phone call with Minor, employee Joy Woodward called Frey to report Minor. Woodward reported that Minor told three clients that during her conversation with Frey, Frey had screamed at, yelled at, and been mean to Minor. Frey testified that this behavior concerned him, and he called Minor into his office to discuss it. Human Resources representative Kathy Grice also attended this meeting. Minor complained that Frey treated her like he was her father, but she admitted that Frey did not yell or scream during their

²¹ The judge found that the Union, at an unspecified time, “agreed to Respondent's [management-rights] proposal with a minor exception.” However, the only statement in the record concerning this finding is Respondent's counsel's assertion, during closing arguments at the Board hearing, that the Union agreed to that proposal during federal mediation, which began in May 2013. Nevertheless, the judge's finding, which no party excepted to, does not impact our determination that the Respondent engaged in overall bad-faith bargaining at least through April 2013.

²² See Sec. D, below.

²³ No party excepts to the judge's dismissal of 8(a)(3) allegations involving disciplinary actions taken against employee Terry Owens. At the hearing, the General Counsel withdrew 8(a)(3) allegations involving employee Lenora Jones. There are also no exceptions to the judge's dismissal of the allegation that the discharge of employee Johnnie Driskell violated Sec. 8(a)(3). As discussed below, however, the General Counsel contends that the ALJ erred in failing to address whether Driskell's discharge also violated Sec. 8(a)(1). See Part III, *infra*.

²⁴ Minor received the highest rating (“[c]onsistently at highest standard”) in seven out of ten performance evaluation categories: ability to learn, knowledge of work, initiative, attitude toward company policy, dependability, personality, and attitude. Minor received the second highest rating (“[u]sually of highest quality”) in the remaining three categories: quality of work, quantity of work, and industry.

phone conversation. Frey explained to Minor that her behavior was inappropriate because it constituted “triangulation,” but he did not indicate any discipline would be forthcoming or was even being considered.

Psychotherapist Michael Allan Comte explained that triangulation occurs when a staff member uses a client to get what the staff member wants. Comte further testified that clients should not learn of conflict between management and staff because such knowledge would be counter-therapeutic. The General Counsel does not dispute the Respondent’s assertion that “Client T,” a rape victim, overheard Minor’s remarks. Frey testified that it took 15 years for him to build a trusting relationship with Client T and that Minor’s triangulation could risk that relationship as well as the Respondent’s relationship with additional clients.

Shortly after her meeting with Frey and Grice, Minor attended the Respondent’s first mandatory meeting related to the union campaign. During the meeting, Minor asked the consultant “how much money [the] Respondent was paying him.” Immediately after that meeting, Minor left the facility to attend a union organizing meeting.

After the organizing meeting had concluded, Grice called Minor to inform her that the Respondent had decided to terminate her employment. Minor testified that Grice explained that the termination was the result of her insubordination. The next day, the Respondent issued Minor a letter of termination, which cited Minor’s failure to follow protocol concerning the holiday party, poor attitude and judgment crossing professional boundaries, misrepresentation of information to clients and staff, and causing distress to clients.

2. Analysis

The General Counsel alleges that the Respondent violated Section 8(a)(3) by discharging Minor on December 7, 2011. The judge dismissed this allegation. We reverse and find the violation.

Our analysis of the Respondent’s disciplinary actions in this case, including Minor’s discharge, is governed by *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982), *approved in NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). Under *Wright Line*, the General Counsel has the burden to prove that an employee’s Section 7 activity was a motivating factor in the employer’s adverse employment action against the employee. The elements required to support the General Counsel’s initial showing are union or other protected concerted activity by the employee, employer knowledge of that activity, and animus on the part of the employer. See, e.g., *Libertyville Toyota*, 360 NLRB 1298, 1301 (2014), *enfd.*

801 F.3d 767 (7th Cir. 2015). Unlawful employer motivation may be established by circumstantial evidence, including, among other things, (1) the timing of the employer’s adverse action in relationship to the employee’s protected activity, (2) the presence of other unfair labor practices, (3) statements and actions showing the employer’s general and specific animus, (4) the disparate treatment of the discriminatees, (5) departure from past practice, and (6) evidence that an employer’s proffered explanation for the adverse action is a pretext. See *National Dance Institute—New Mexico, Inc.*, 364 NLRB No. 35, *slip op.* at 10 (2016).

If the General Counsel makes the required initial showing, the burden shifts to the employer to prove by a preponderance of the evidence that it would have taken the same action even in the absence of the union or other protected concerted activity. *Libertyville Toyota*, 360 NLRB at 1301. The employer does not meet its burden merely by establishing that it had a legitimate reason for its action; rather, it must demonstrate that it would have taken the same action in the absence of the protected conduct. See, e.g., *Bruce Packing Co.*, 357 NLRB 1084, 1086–1087 (2011), *enfd.* in pertinent part 795 F.3d 18 (D.C. Cir. 2015). If the evidence establishes that the proffered reasons for the employer’s action are pretextual—i.e., either false or not actually relied upon—the employer fails by definition to show that it would have taken the same action for those reasons in the absence of the protected conduct. See, e.g., *Golden State Foods Corp.*, 340 NLRB 382, 385 (2003).²⁵

²⁵ Contrary to the judge’s characterization of *Wright Line*, “proving that an employee’s protected activity was a motivating factor in the employer’s action does *not* require the General Counsel . . . to demonstrate some additional, undefined ‘nexus’ between the employee’s protected activity and the adverse action.” See *Libertyville Toyota*, 360 NLRB at 1301 *fn.* 10 (2014) (collecting cases), *enfd.* sub nom. *AutoNation, Inc. v. NLRB*, 801 F.3d 767 (7th Cir. 2015).

Regarding *Wright Line*, *supra*, Chairman Ring agrees with the views expressed by Member Kaplan in *Advanced Masonry Assoc., LLC d/b/a Advanced Masonry Systems*, 366 NLRB No. 57, *slip op.* at 3–4 *fn.* 8 (2018), and by former Member Johnson in *St. Bernard Hospital & Health Care Center*, 360 NLRB 53, 53 *fn.* 2 (2013). Thus, he agrees that there is no separate and distinct “nexus” element that the General Counsel must satisfy under *Wright Line*. He emphasizes, however, that *Wright Line* is inherently a causation test. Thus, identification of a causal nexus as a separate element the General Counsel must establish to sustain his burden of proof is superfluous because “[t]he ultimate inquiry” is whether there is a nexus between the employee’s protected activity and the challenged adverse employment action. *Chevron Mining, Inc. v. NLRB*, 684 F.3d 1318, 1327–1328 (D.C. Cir. 2012). To the extent his colleagues suggest that the General Counsel *invariably* sustains his burden of proof under *Wright Line* whenever, in addition to protected activity and knowledge thereof, the record contains evidence of animus, Chairman Ring disagrees. Not just any evidence of animus against protected activity generally will necessarily satisfy the initial *Wright Line* burden of proving unlawful motivation for the particular

We find that the General Counsel has met his initial burden of showing that Minor's protected activity was a motivating factor in the Respondent's decision to discharge her. There is no dispute that Minor engaged in union activity and that the Respondent knew of such activity. She was a member of the Union's initial organizing campaign and attended union meetings, including the December 4 meeting that capped the Union's campaign blitz. At the Respondent's December 7 mandatory campaign meeting, Minor asked the Respondent's consultant how much the Respondent paid him.

The suspicious timing of Minor's discharge supports our finding that the General Counsel met his initial burden of showing the Respondent's antiunion animus. The Respondent became aware of the Union's organizing campaign a short time before Minor's December 7 discharge. It is undisputed that the campaign blitz, which occurred just days before Minor's discharge, was highly visible. It appears that the Respondent was concerned enough about the Union's mounting campaign, including the blitz, to quickly schedule a mandatory employee meeting facilitated by an outside consultant. Notably, the Respondent discharged Minor on the very day of that first mandatory campaign meeting, at which Minor challenged the Respondent's consultant and expressed her pronoun sentiment. Minor's discharge also occurred shortly after she attended a union meeting that same day. We find that this timing strongly supports a finding that Minor's pronoun activity was a motivating factor in the Respondent's decision to discharge her.²⁶ See *Lucky Cab Co.*, 360 NLRB 271, 274 (2014) ("The Board has long held that the timing of adverse action shortly after an employee has engaged in protected activity . . . may raise an inference of animus and unlawful motive."); *KAG-West, LLC*, 362 NLRB No. 121, slip op. at 2 (2015) ("Timing alone may suggest anti-union animus as a motivating factor in an employer's action.") (quoting *Masland Industries*, 311 NLRB 184, 197 (1993)), petition for review dismissed 2017 WL 160821 (D.C. Cir. 2017).

adverse employment action at issue. See, e.g., *Roadway Express, Inc.*, 347 NLRB 1419, 1419 fn. 2 (2006) (finding that, although there was some evidence of animus in the record, it was insufficient to sustain the General Counsel's initial *Wright Line* burden of proof); *Atlantic Veal & Lamb, Inc.*, 342 NLRB 418, 418-419 (2004) (finding insufficient facts to show that the respondent's animus against employee Rosario's union activity was a motivating factor in the decision not to recall him), enfd. 156 Fed. Appx. 330 (D.C. Cir. 2005). Applying this standard, Chairman Ring agrees with the findings set forth below.

²⁶ Indeed, when Frey first met with Minor to discuss the incident—which occurred before she expressed her pronoun sentiment at the Respondent's mandatory meeting—Frey did not mention discipline of any kind.

The timing of the Respondent's decision is even more suspicious given its proximity to Minor's strongly positive performance evaluation, which she received just 1 week prior to her discharge. Thus, the Respondent chose to quickly discharge Minor, rather than issuing her a lesser form of discipline, despite having just given her a positive performance evaluation and despite the lack of any evidence that Minor had ever been disciplined previously. See *Toll Mfg. Co.*, 341 NLRB 833, 833 (2004) (finding that employer acted with unlawful motivation where it discharged a leading union activist "precipitously and without prior warning on the heels of the union campaign").

Finally, the Respondent's extensive unfair labor practices in violation of Section 8(a)(5), including its overall failure to bargain in good faith, further demonstrate its animus. See, e.g., *U.S. Marine Corp.*, 293 NLRB 669, 669-671 (1989) (animus demonstrated by, among other things, employer's "numerous 8(a)(5) violations," including its failure to provide information and bad-faith bargaining), enfd. 944 F.2d 1305 (7th Cir. 1991), cert. denied 503 U.S. 936 (1992).

Accordingly, the burden shifted to the Respondent to show that it would have discharged Minor even in the absence of her union activity. We find that the Respondent did not meet its burden in this regard. The Respondent argues that Minor's triangulation—her (false) claim, in the presence of Client T, that Frey had screamed at, yelled at, and been mean to her—was "potentially far-reaching" and would have "serious consequences" to its clients. The General Counsel does not dispute Comte's testimony that it is counter-therapeutic for clients, like Client T, to be enmeshed in conflicts between employees and their supervisors. However, while Minor engaged in improper conduct, the judge made an unsubstantiated leap in finding that the Respondent had carried its *Wright Line* defense burden to prove that her discharge would have occurred without regard to Minor's protected conduct. Neither the judge nor the Respondent identified any instances of termination for prior employee counter-therapeutic conduct. The judge summarily concluded that Minor engaged in a "major violation of policy" but failed to identify any protocol by the Respondent for discharging employees for counter-therapeutic conduct. Indeed, discussed below are examples of Respondent's employees who purposefully physically injured clients—surely also deemed a major violation of policy—without being terminated. The judge's finding that Minor's "major violation of policy" warranted her discharge does not equate to a finding that the Respondent met its *Wright Line* defense burden. See *Hicks Oil & Hicksgas*, 293 NLRB 84, 85 (1989) ("A judge's personal belief that the

employer's legitimate reason was sufficient to warrant the action taken is not a substitute for evidence that the employer would have relied on [the nondiscriminatory] reason alone."), enfd. 942 F.2d 1140 (7th Cir. 1991). We do not condone Minor's conduct, and we fully recognize the Respondent's important role in ensuring the well-being of its clients. However, the Respondent's articulation of a legitimate reason for its termination decision does not constitute a showing that it would have discharged Minor for that reason even in the absence of Minor's union activities. See *Bruce Packing Co.*, 357 NLRB at 1086–1087 (employer does not meet its *Wright Line* defense burden merely by establishing that it had a legitimate reason for its action; rather, it must demonstrate that it would have taken the same action in the absence of the protected conduct). Accordingly, we find that the Respondent violated Section 8(a)(3) when it discharged Minor on December 7, 2011.

B. Alicia Sale and Hannah Gates

1. Facts

Alicia Sale and Hannah Gates worked as Direct Service Staff at the same client residence. Both were prominent supporters of the Union. Sale and Gates appeared on the union flyer mailed to employees on December 14, 2011, which identified them as members of the union organizing committee. As noted, Frey admitted seeing the flyer in mid-December 2011.

On the morning of December 20, 2011, Gates called HOH Jessica Lanzoratta after Sale discovered that a client (Client R) had a bruise and scratch on his leg. Frey testified that Client R is 84 years old and suffers significant speech and physical issues due to cerebral palsy. Lanzoratta reported Client R's physical issues to Frey, who that same morning visited the residence, along with Program Coordinator Mieke Middelhoven. It is undisputed that Sale and Gates were responsible for Client R's care that day.

Frey and Sale met in Client R's room. Frey evaluated Client R and determined that his wheelchair caused the injuries. Client R also complained to Frey that his stomach hurt. Frey testified that Client R stated that he had been asking to go to the doctor all morning. Frey also testified that Sale admitted as much. Sale and Gates testified that Client R did not ask to see a doctor that morning. The judge acknowledged this conflicting testimony and tacitly credited Frey, finding that "Frey heard from client R that he had requested to see a doctor."²⁷ The

Respondent arranged for Lanzoratta to take Client R to the doctor.

That same day (December 20, 2011), the Respondent completed an incident report, which named Gates as the involved employee. The report does not mention Sale. The report explained that Gates observed Client R's injuries, that Frey and Middelhoven determined that the injuries were likely due to a sharp piece of metal on Client R's wheelchair, and that "[Kitsap] Staff are covering up this piece of metal to alleviate the sharp point to avoid further injuries." On the afternoon of December 20, 2011, the Region faxed notification to Frey that the Union had filed its election petition.

Gates testified that an employee from the wheelchair company visited the residence on December 21, 2011. Gates testified that the company employee inspected the wheelchair, reported to Gates that he did not see anything that would have hurt Client R, but suggested they pad the wheelchair if they saw fit. Gates testified that HOH Lanzoratta told her that she would purchase materials to pad the wheelchair. Gates further testified that Frey was aware of the wheelchair company's visit, that Lanzoratta would repair the wheelchair, and that Frey was not upset that Sale and Gates failed to repair the wheelchair.

Although the judge did not explicitly cite Gates' testimony, he appeared to credit Frey's contrary testimony. Frey testified that he told Sale and Gates to repair the wheelchair—which is consistent with the earlier incident report stating that "[Kitsap] Staff are covering up this piece of metal . . . to avoid further injuries"—and that they failed to do so. The judge found that Frey returned to the residence on December 21, discovered the repairs had not been made by Sale and Gates as requested, and completed them himself.

On December 23, 2011, the Respondent informed Sale and Gates, through identical letters, that it had placed them on administrative leave pending further investigation.²⁸ The letters fault Sale and Gates for not honoring Client R's requests to see a doctor and for failing to repair the wheelchair. The letters conclude that the employees' "failure to act in response to the client's needs and requests jeopardized the client [and] Kitsap . . . and constitutes neglect." On January 4, Gates attended a representation case hearing as a supporter of the Union.

Frey reported the incidents to the State of Washington. The State's investigator, Rodney Johnson, testified at the

²⁷ The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are in-

correct. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

²⁸ These letters do not state that Sale's and Gates' suspensions were without pay, and the General Counsel does not allege as much.

hearing. Johnson testified that he first contacted Frey about the investigation by phone on January 31.

On February 1, the Respondent discharged Sale and Gates. The Respondent issued them identical discharge letters, which cited their refusal “to seek medical assistance in a timely manner for Client [R] when he asked to be transported the Doctor as he was having severe stomach pains” and their failure to follow an order “to cover these sharp points [on the wheelchair] with tape.”

State investigator Johnson testified that following his initial contact with Frey, he subsequently interviewed Sale, Gates, Client R, and HOH Lanzoratta. On March 27, the State “closed this case without disciplinary action because no violation was determined.”

2. Analysis

The General Counsel alleges that the Respondent violated Section 8(a)(3) by placing Sale and Gates on administrative leave on December 23, 2011, and by discharging them on February 1. The judge dismissed these allegations. We reverse and find the violations.

The General Counsel has met his initial burden of showing that Sale’s and Gates’ protected activity was a motivating factor in the adverse employment actions. Both employees engaged in protected activity, and the Respondent had knowledge of that protected activity. Sale and Gates supported the Union, including by participating as members of the union organizing committee. Their names and pictures appeared on the union flyer, of which Frey became aware in mid-December 2011.

The timing of the adverse actions taken against Sale and Gates supports a finding that the General Counsel met his initial burden of showing antiunion animus. The Respondent placed Sale and Gates on administrative leave 3 weeks after the union blitz, less than 2 weeks after they appeared on the union flyer, and just 2 days after the Respondent received notice that the Union’s campaign was successful enough to support the filing of an election petition. In addition, the Respondent discharged Gates about 1 month after Gates attended the preelection hearing, where she lent her support to the Union.

Notably, the Respondent did not wait until the conclusion of the investigation before deciding to discharge Sale and Gates. They were discharged on February 1, even though the results of the investigation were not issued until March 27. Both employees were on administrative leave during the investigation; there was no evident risk to patients that could have prompted the Respondent’s hasty decision.

The General Counsel has further demonstrated animus by his strong showing that Sale and Gates were treated disparately compared to other employees who committed

similar acts. The General Counsel introduced disciplinary reports concerning employees Jackie Cavanaugh and Gerry Goodman. Regarding Cavanaugh, on December 2, 2011, Manager Dawn Worthing filed an incident management report stating that Cavanaugh yelled at a client, pulled the client by her arms, put her knee into the client’s side, and pushed the client’s chair from behind in an effort to place the client in a timeout. Frey reported this incident to the State of Washington for investigation. Frey testified that the State closed its investigation on October 17 (the record does not indicate the outcome of that investigation). Frey further testified that, during the investigation, Cavanaugh “stayed working the whole period of time” but “was never left unsupervised with a client.” As of the May 2013 hearing date in this proceeding, the Respondent continued to employ Cavanaugh. Regarding Goodman, on August 25, 2011, Worthing filed an incident management report stating that Goodman purposely injured a client’s ankle. The Respondent retrained all staff on how to physically transfer that client and prohibited Goodman from working alone with the client. The Respondent does not assert that it placed Goodman on administrative leave because of his misconduct.

The Respondent has failed to explain why it treated Sale and Gates far more harshly than Cavanaugh and Goodman for committing comparable, if not lesser, instances of patient neglect and mistreatment. Sale and Gates assertedly neglected to repair a client’s wheelchair, causing injury to the client, and they failed to address the client’s request to see a doctor. In contrast, the Respondent’s client report for Cavanaugh documents intentional abuse, including physical abuse: pulling the client by her arms and putting her knee into the client’s side. But whereas Sale and Gates were placed on administrative leave and subsequently discharged, the Respondent continued to employ Cavanaugh and merely ensured that she was not left unsupervised with that specific client. Notably, the Cavanaugh incident occurred just weeks before the Sale and Gates incident. The Goodman incident also involved a client’s physical injury due to employee neglect or misjudgment, or worse: Worthing’s report stated that Goodman *purposely* injured the client’s ankle. Again, rather than discharging Goodman or placing her on administrative leave, the Respondent merely retrained staff and prohibited Goodman from working alone with that client. Consistent with well-established Board precedent, we find that the disparate treatment of Sale and Gates strongly supports an inference of unlawful motivation on the Respondent’s part, which we draw. See, e.g., *Central Valley Meat Co.*, 346 NLRB 1078, 1079 (2006) (employee’s verbal warnings and discharge for failing to

sanitize tools found unlawful where “other employees received only written warnings for sanitation violations and were not discharged”); *Naomi Knitting Plant*, supra, 328 NLRB at 1283 (employee was discharged for conduct “for which other employees in the same position were not disciplined. Such is a classic case of disparate treatment.”).

We find that the Respondent has not met its defense burden under *Wright Line*. The Respondent has offered no explanation for its disparate treatment of Sale and Gates. It contends that it had legitimate reasons for disciplining Sale and Gates because the testimony shows that they failed to repair the wheelchair and failed to act on Client R’s requests to see a doctor. Again, however, the Respondent’s burden is not merely to show that it had a legitimate reason to act as it did, but to prove that it would have taken the challenged actions had Sale and Gates not engaged in protected conduct. E.g., *Bruce Packing*, 357 NLRB at 1086–1087. The Respondent has not done so. Accordingly, we find that the Respondent violated Section 8(a)(3) when it placed Sale and Gates on administrative leave and subsequently discharged them.

C. Gary Martell

1. Facts

The Respondent hired Gary Martell in October 2011. That same month, Martell signed and initialed the Respondent’s “Employee Professional Relationship Contract,” which identifies “behavioral requirements that all staff must follow.”²⁹ The General Counsel does not allege that this contract is unlawful. In December 2011, Martell began working with several clients as part of the Respondent’s Supportive Living Lite (SLL) program. Unlike direct service clients, who require significant support, clients in the SLL program require less assistance. Martell’s duties in this position included completing paperwork regarding clients’ finances—i.e., preparing an accounting of clients’ income and money spent—and presenting that paperwork to the Respondent during monthly meetings.

Client Resources Specialist Jamie Callahan testified that, during the spring of 2012, Martell failed to notice an

unauthorized charge on a client’s bank account. Callahan testified that she contacted the company to reverse the charge and instructed Martell to monitor the client’s bank account to verify that the charge was reversed. The company did not reverse the charge, and Callahan testified that Martell failed to detect its failure to do so. There is no dispute that Martell struggled with properly completing financial paperwork.³⁰ Callahan testified that she continued to train Martell in this aspect of his responsibilities.

The Respondent presented undisputed evidence that Martell also failed to properly schedule his time with clients. Frey testified that Manager Worthing learned that Martell’s monthly schedule revealed scheduling overlaps, i.e., instances where his schedule showed him working with two clients at the same time. Worthing testified that this was inappropriate because the Respondent can only bill one client for any given block of time.

On May 22, the Union notified the Respondent that it had selected five employees, including Martell, to serve on the Union’s bargaining committee.³¹

In a May 31 email to Frey, Worthing reported that she worked with Martell to correct his scheduling overlaps. Worthing also noted that she discussed with Martell his “trouble with financial paperwork.” On June 1, Frey issued Martell a written warning for his scheduling errors. The warning also notes that Callahan and Manager Molly Parsons reported that they had to “walk [Martell] through [his] financials on several occasions” and expressed their concern that Martell did not “grasp the concept of the required paperwork” and did not put forth much effort in completing it. The General Counsel does not allege that this written warning violated the Act.

On June 8, Martell met with Callahan and Parsons to discuss his May paperwork. Callahan testified that Martell’s financial paperwork was “completely blank.” Martell offered no explanation for his failure to complete the paperwork. Callahan immediately reported this to Frey, who instructed Martell to complete the paperwork in another room. A few minutes later, Frey returned and suspended Martell without pay.

²⁹ By signing the Respondent’s Employee Professional Relationship Contract, Martell agreed that (1) he was “not allowed to have any personal contact with clients outside of [his] usual work hours,” (2) he was “only allowed to be present at the clients [sic] home during [his] scheduled work shift,” a policy that “helps protect against some staff being viewed as more caring than other staff and helps staff avoid developing personal relationships outside their professional role,” and (3) he “must maintain clear separation of [his] personal life and [his] professional life”—specifically, he “shall not discuss information of high emotional content about [his] personal life with clients. This includes information about [his] personal relationships, work problems, financial situation, or living situation.”

³⁰ The General Counsel acknowledges that “[e]ver since he was assigned to his first SLL client in December 2011, Martell had struggled with the paperwork required of him,” and that “from January through May 2012 . . . Martell showed up to his monthly paperwork meetings at Respondent’s office with incomplete financial paperwork and questions on how to properly complete it.”

³¹ The judge mistakenly found that Martell attended a bargaining session on June 4. The parties did not bargain on that date. Rather, the Union held its training session for bargaining representatives—including Martell—on June 4.

That same day, Frey issued Martell a letter listing six reasons for his suspension: (1) failure to complete the paperwork due in early June, (2) inaccurate January paperwork, (3) untimely and inaccurate April paperwork, (4) failure to appropriately complete his schedule by overlapping client time, (5) inappropriately raising his voice at staff on June 7, and (6) “dropp[ing] the ball” by failing to complete paperwork on a daily basis.

On June 12, Frey, Program Coordinator Middelhoven, Union Representative Tharp, and Martell met to discuss Martell’s suspension. Martell admitted the scheduling errors and acknowledged that there was no excuse for his failure to complete the financial paperwork due in June.

On June 20, Frey informed Martell that he was still on suspension pending the Respondent’s continued investigation into the matters outlined in Martell’s June 8 written suspension. Frey asked that Martell respond to questions concerning the unauthorized bank charge incident discussed above, and more generally, Frey asked whether Martell understood the “importance of preparing client financials, both as a requirement of this agency and the State of Washington.” Frey also raised a new issue, asking Martell to explain his decision “on more than a dozen occasions” to use clients’ first and last names in financial paperwork, thereby “disclosing confidential information without a signed release to do so.” Martell provided a written response as instructed.

During his suspension, Martell went to a client’s home during nonworking hours and discussed his suspension with the client. Frey testified that he spoke with the client about his conversation with Martell. Frey testified that the client, who is autistic and has a tendency to fixate on things, spoke about the specifics of Martell’s suspension and became “very obsessed” with the Union after speaking with Martell. On June 28, the Respondent sent Martell a letter asking that he explain his meeting and conversation with this client. On July 9, Martell provided a written response. Martell admitted that he told the client he was “in trouble for not completing [his] paperwork.” He also acknowledged the Employee Professional Relationship Contract, which prohibits such conduct. On July 13, Martell participated in the parties’ first bargaining session.

The Respondent discharged Martell on July 19. In an explanatory letter, the Respondent reiterated the six reasons cited in Frey’s earlier suspension letter and added two additional reasons for Martell’s discharge: (1) at a talent show rehearsal, engaging in a conversation with a staff member for an hour instead of engaging with clients and completing paperwork, and (2) failing to follow “[Kitsap] policies regarding confidentiality despite specific direction to do so.” The letter also referenced Mar-

tell’s failure to adhere to the Employee Professional Relationship Contract described above.

2. Analysis

The General Counsel alleges that the Respondent violated Section 8(a)(3) by placing Martell on administrative leave on June 8 and discharging him on July 19. We adopt the judge’s dismissal of these complaint allegations.

We find it unnecessary to determine whether the General Counsel met his initial burden under *Wright Line*. Even if he did, we find that the Respondent established that it would have suspended and discharged Martell even in the absence of his protected union activity. As explained above, Martell exhibited a pattern of poor performance in meeting his duty to complete financial paperwork. The Respondent did not ignore his poor performance but rather addressed it through training, coaching, and a lawful June 1 written warning. That warning did not lead to improved performance, as evidenced by Martell’s showing up for a June 8 meeting having completed no financial paperwork at all. We are persuaded that the Respondent would have imposed further discipline on Martell for this incident even in the absence of his union activities.

The General Counsel argues that Martell was treated disparately compared to other employees whom the General Counsel argues similarly failed to properly complete client financial paperwork.³² While the Respondent does not dispute that it did not suspend or discharge these comparator employees, we do not find those instances comparable to Martell’s conduct. The record demon-

³² The General Counsel introduced evidence of four “Caregiver Document Events,” which memorialized the following incidents:

- (1) On September 22, 2011, the Respondent informed Muriel Spence that because she took two clients on a cruise, she was responsible for “ledgering their money.” A few days later, Spence had not completed this ledgering. Spence requested an original balance, and the Respondent provided it.
- (2) On June 8, Tamera McDowell did not show up for a paperwork meeting. McDowell claimed she forgot about the meeting, but the Respondent observed her working on the paperwork outside an office. McDowell admitted that she had not forgotten about the meeting and had not completed the paperwork, apologized for making excuses, and promised to complete her paperwork.
- (3) On July 6, the Respondent explained to Kimberley Smith that she needed to maintain a daily running balance of a client’s finances, rather than just an end-of-the-month balance.
- (4) On September 10, Joshua Westgate arrived to a paperwork meeting without reconciling a client’s bank statement and having failed to complete entries for two transactions. Westgate completed the reconciliation and two entries. The Respondent informed Westgate that it was important he complete and reconcile ledgers in advance of paperwork meetings.

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strates that those employees failed, on one occasion, to properly complete financial paperwork. By comparison, Martell exhibited an ongoing pattern of failing to properly complete financial paperwork, for which he received training, coaching, and a lawful written warning. Martell's lawful warning accurately reflected this pattern of failure: it reported that the Respondent had to "walk [Martell] through [his] financials on several occasions," and it expressed concern that Martell did not "grasp the concept of the required paperwork." Moreover, on June 8 Martell showed up at his financial paperwork meeting without having prepared any records at all. In contrast, the General Counsel's comparators either failed to *fully* complete paperwork, or they fully completed their paperwork, but with mistakes.

The General Counsel argues that the Respondent was willing to tolerate Martell's incomplete paperwork for months and only chose to discipline him in early June after learning that he would represent the Union during contract negotiations. We are unpersuaded by this argument. The Respondent did not ignore Martell's incomplete paperwork. Callahan coached and trained Martell, and Worthing also worked with him. Moreover, there is no dispute that the written warning issued to Martell on June 1 was lawful, and this discipline also occurred after the Respondent learned of Martell's status as a union bargaining representative. Martell's performance following this lawful warning promptly went from bad to worse when he showed up on June 8 without having done *any* work on required financial reports. It stands to reason that the Respondent would treat Martell's failure to take the June 1 warning to heart by imposing additional and progressive discipline. We find that it would have done so regardless of Martell's union activity.

The General Counsel also questions the timing of the Respondent's decision to discharge Martell, just 6 days after the parties' first bargaining session. But the Respondent discharged Martell at that time only after he approached a client to complain about his suspension. The Respondent maintains a policy prohibiting such conduct, which the General Counsel does not allege to be unlawful. And the Respondent offered undisputed evidence that this discussion in fact had a negative impact on that client.

Finally, we reject the General Counsel's suggestion that the Respondent should be faulted for delaying almost 2 months before it decided to discharge Martell. The Respondent used this time to investigate Martell's actions, to meet with Martell and a union representative to discuss his suspension, and to provide Martell the opportunity to explain, in writing, his failure to provide a month's worth of financial paperwork, his decision to

enmesh a client in his suspension, and his overall work performance. Frey testified that before he could discharge Martell, he had to discuss the matter with administrator Closser, speak to Callahan, and follow various HR procedures, all of which took time to complete. If anything, this conduct bolsters our finding that the Respondent met its defense burden under *Wright Line*. Cf. *Denholme & Mohr, Inc.*, 292 NLRB 61, 67 (1988) (finding that employer's "failure to investigate the alleged misconduct of its employees fully and fairly, or even to provide them with an opportunity to rebut the accusations made against them, suggests the presence of discriminatory motivation").

Accordingly, we dismiss all 8(a)(3) complaint allegations relating to Martell.³³

D. Lisa Hennings

1. Facts

The Respondent hired Lisa Hennings in November 2009 and promoted her to an HOH position in early 2010. Hennings' name and picture appeared in the Union's December 2011 flyer. In December 2011, Hennings attended a company meeting, which Frey also attended. The judge found that at this meeting, Hennings "indicated to Frey that she was in favor of the Union." Specifically, Hennings testified that "the subject of the union came up," she told Frey "you know what side I'm on . . . I'm pro union," and Frey responded, "I kind of figured that." Union Representative Tharp testified that Hennings was present at the election vote count on March 15.

On March 16, the Respondent issued Hennings a letter of reprimand for lending money to three clients during a grocery trip. The reprimand noted that "the OPSL [Olympic Peninsula Supportive Living] Code of Conduct states '[c]aregivers are not to borrow or lend anything which includes money or food from their clients.'" The General Counsel does not dispute the existence of this rule or allege that it is unlawful. Hennings admitted that she lent the clients money, but testified that it was "common practice" for employees to lend clients money and that the Respondent "never" disciplined employees for doing so.

On April 12, the Respondent issued Hennings a written warning for being 7 minutes late to work. The Respond-

³³ Member Pearce would find that the Respondent did not meet its burden of showing it would have discharged Martell even in the absence of his protected activity. The Respondent learned about Martell's visit to the client in late June, but did not discharge him for that and other conduct until July 19, which was only *after* he participated in the July 13 bargaining session as a member of the Union's bargaining committee. The Respondent has failed to provide any valid explanation for this sequence.

ent does not dispute Hennings' testimony that she was late that day because she had attended a union meeting, where the Union held nominations to select members of its bargaining committee. In May, the Union announced that Hennings was a member of its bargaining committee. Hennings attended the August 6 bargaining session.

On August 10, the Respondent issued Hennings a letter of direction. The letter reported that Frey witnessed Hennings completing a staff schedule, which Frey asserted was not an HOH job duty. Hennings testified that she was not scheduling employees but rather writing down shift assignments that had been made by Human Resources Representative Grice. In the letter of direction, Frey stated: "May I remind you, that in sworn testimony, at NLRB Headquarters in Seattle, [Kitsap] Head of Households testified that they do not and have never scheduled staff." In the judge's words, Frey told Hennings that "she had better not be scheduling because there had been testimony in the Board representation case that head of households did not do scheduling." The judge found, however, that the Respondent presented contrary evidence at the representation-case hearing that "heads of household did scheduling for their households." The Respondent does not dispute the judge's finding.

On August 15, the Respondent issued Hennings a letter of direction regarding two issues, monthly narratives and medication charting. First, the letter noted that Hennings had only made three narrative entries for that month, and it admonished her for making "little progress." The letter also stated that "the trend you were setting seemed to also be followed by the rest of your Household as most of the narrative pages were empty for each of the clients." Second, the letter admonished Hennings for failing to record, on two occasions, why a client did not receive medication as scheduled. It is undisputed that caregivers are responsible for recording clients' daily activities, including a log of medication taken and any reason why a client did not receive medication.

On August 20, the Respondent issued Hennings a written warning for failing to work an assigned schedule. On that day, Hennings attended a birthday party at a residence (not her regularly assigned residence) and was responsible for the care of two clients who attended that party. To assist her daughter, who had locked herself out of her home, Hennings left the party at a time when one of her clients remained there. Hennings testified that the HOH running the party agreed to watch Hennings' client while Hennings helped her daughter. Hennings testified that after helping her daughter, she returned to her regularly assigned residence because by that time, her second client had also left the party. In the written warning,

Frey stated that he happened to drive by when Hennings returned to her regularly assigned residence, and he did not see her with any clients. Frey expressed concern that Hennings was not attending the party and supporting her two clients, and he admonished Hennings for not securing coverage for her clients.

In November, the Union held a protest march at the home of the Respondent's owner. Hennings did not participate in this march. In December, Frey and the owner approached Hennings and complained about the march. Hennings stated that she was not involved. The Respondent does not dispute Hennings' testimony that Frey responded, "You're union, you're involved."

On February 4, 2013, Frey called Hennings, stated that he had serious concerns with her work, and placed her on administrative leave without pay. On February 6, 2013, the Respondent demoted Hennings. In a written document, Frey cited the following conduct as reasons for her demotion: (1) Hennings' April 2012 7-minute late arrival, (2) her August 2012 unauthorized scheduling of staff, (3) her August 2012 failure to complete narratives and note medication issues, and (4) her August 2012 decision to leave the client party to help her daughter. The Respondent also cited a host of additional reasons, including multiple medication errors, acting "too touchy feely" with clients, scheduling medical appointments without securing adequate staff coverage, and general job inattentiveness. Frey concluded that he had "serious concerns as to your ability to follow direction as given to you by your Supervisors as well as your ability to follow this agency's policy and procedures."

2. Analysis

For the following reasons, we adopt the judge's findings that the Respondent violated Section 8(a)(3) by issuing Hennings the April 12 written warning and the August 10 letter of direction, and by demoting Hennings on February 6, 2013. We reverse the judge and find that the Respondent also violated Section 8(a)(3) by issuing Hennings the August 15 letter of direction and by placing Hennings on administrative leave on February 4, 2013. Finally, we affirm the judge's dismissal of complaint allegations concerning Henning's March 16 letter of reprimand and her August 20 written warning.³⁴

³⁴ In agreeing with the judge's dismissal of the allegation concerning the March 16 letter of reprimand, Chairman Ring and Member Pearce note that Hennings' conduct—lending money to clients—violated the Respondent's rules, and the judge implicitly discredited Hennings' testimony that lending money was a common practice engaged in by employees without discipline.

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a. The April 12 written warning for lateness

We find that the General Counsel has met his initial burden under *Wright Line* to show that Hennings' protected conduct was a motivating factor in the Respondent's decision to issue Hennings a warning on April 12 for being 7 minutes late. Concerning this allegation and all others that involve Hennings, the General Counsel has established that Hennings actively supported the Union and that the Respondent had knowledge of that protected activity. Hennings' name and picture appeared in the Union's December 2011 flyer; at a December 2011 meeting with Frey, Hennings confirmed her pronoun stance when she told Frey, "You know what side I'm on"; and Hennings was present at the March 15 election vote count. The timing of the April 12 warning also supports the General Counsel's case. On the same day she received this written warning, Hennings attended a meeting where the Union considered nominations for its bargaining committee. Indeed, this meeting was the reason Hennings was 7 minutes late.

In addition, the General Counsel established that other employees were guilty of more egregious instances of tardiness than Hennings' 7-minute late arrival, but unlike Hennings they were not disciplined. The Respondent does not dispute that the following employees received no discipline for the following conduct:

- In 2005, employee Manuel Gipson was a "no show no call" for 9 days, claimed time for several days that he had not worked, and offered a false medical excuse for his failure to work.
- In 2006, HOH Shirley Gallauher was "late for work between 5 and 15 minutes, 3 or 4 days per week."
- In 2007, employee Janice Henry was "late almost everyday [sic] for . . . two weeks." The Respondent warned her that if she were late again, "disciplinary action would need to be taken."
- In 2008, employee Andie Rood worked for just a few minutes and left, without telling the Respondent, because of a backache. Rood's unannounced departure resulted in clients being "low on food."

These instances of disparate treatment further support the General Counsel's *Wright Line* case.

The Respondent offered no explanation for this disparate treatment or any other evidence to show that it would have issued the April 12 warning even in the absence of Hennings' union activities. Accordingly, we find that the Respondent violated Section 8(a)(3) when, on April 12, it issued Hennings a written warning for being 7 minutes late.

b. The August 10 letter of direction for staff scheduling

Next, the General Counsel alleges that the Respondent violated Section 8(a)(3) when it issued Hennings a letter of direction on August 10 for scheduling staff. We find that the General Counsel met his initial burden of showing that Hennings' union activity was a motivating factor in this discipline. In addition to the above evidence of Hennings' protected activity and the Respondent's knowledge of it, in May the Union announced that Hennings would act as one of its bargaining representatives. In addition, Hennings was an HOH, and the letter of direction itself referenced the protected activity of HOHs in testifying at the representation-case hearing. In essence, the Respondent disciplined Hennings for conduct inconsistent with that testimony, not with her position as an HOH: Frey admitted that at the representation hearing, he testified that HOHs work "hand in hand" with HR Manager Grice regarding employee scheduling. Incredibly, the Respondent continues to argue that it does not permit HOHs to schedule staff and therefore Hennings' discipline for doing so was lawful. The Respondent does not dispute, however, that it took a contrary position at the representation-case hearing. Given this contradiction, we find pretextual the Respondent's asserted reason for issuing Hennings the August 10 letter of direction. Accordingly, we find that the Respondent violated Section 8(a)(3) when it issued the August 10 letter of direction.

c. The August 15 letter of direction for failing to complete narratives and medical charting

The General Counsel alleges that the Respondent violated Section 8(a)(3) on August 15 when it issued Hennings a letter of direction for failing to complete client narratives and medical charting. In addition to evidence cited above that supports the General Counsel's initial *Wright Line* case, we find persuasive the General Counsel's evidence of disparate treatment. Concerning Hennings' failure to complete client narratives, Frey noted in the letter of direction that "the trend you were setting seemed to also be followed by the rest of your Household as most of the narrative pages were empty for each of the clients." The Respondent does not dispute Hennings' testimony that the Respondent did not discipline these other employees for failing to complete client narratives. Concerning Hennings' medical charting errors, Hennings testified that other staff members were responsible for those errors. Although the Respondent argues that Hennings was also responsible for those errors because her position as an HOH required that she correct them, Frey admitted at the hearing that the employees who committed the errors did not receive any discipline. Accord-

ly, we find that the Respondent violated Section 8(a)(3) when, on August 15, it issued Hennings a letter of direction for failing to complete narratives and medical charting.

d. The February 4, 2013 administrative leave and February 6, 2013 demotion

We find that the Respondent also violated Section 8(a)(3) on February 4, 2013, when it placed Hennings on administrative leave, and on February 6, 2013, when it demoted Hennings. Two months earlier, the Respondent continued to show antiunion animus when Frey, in the presence of the Respondent's owner, accused Hennings of involvement in the Union's protest march outside the owner's home, stating, "You're union, you're involved." But even apart from this statement, the Respondent's adverse employment actions on February 4 and 6, 2013, violated the Act because they were based in part on discipline we have found unlawful. When Frey placed Hennings on administrative leave, he generally cited his serious concerns with her work, which logically encompasses work-related conduct for which Hennings had been unlawfully disciplined. And Hennings' demotion letter expressly relied on unlawful discipline, citing Hennings' April 12 written warning and August 10 and 15 letters of direction. Accordingly, the Respondent violated Section 8(a)(3) when, on February 4, 2013, it placed Hennings on administrative leave without pay, and when, on February 6, 2013, it demoted her. See *Hays Corp.*, 334 NLRB 48, 50 (2001) ("It is well settled that, where a respondent disciplines an employee based on prior discipline that was unlawful, any further and progressive discipline based in whole or in part thereon must itself be unlawful.").

e. The August 2012 written warning for leaving a client at a party

We also find that the Respondent has shown that it would have issued Hennings the August 2012 written warning even absent her protected activity. It is undisputed that one of Hennings' clients was attending a party, that Hennings was supposed to remain with this client, and that Hennings left the residence where the party was held to attend to a matter unrelated to work (helping her daughter, who had locked herself out of her home). The General Counsel introduced comparator evidence, but we find this evidence too dissimilar to show that Hennings was treated disparately. The General Counsel also points out that the Respondent did not discipline staff at the residence who agreed to watch Hennings' client. However, those employees remained at their assigned residence, while Hennings admittedly left her assigned residence to perform a matter unrelated to work. Finally, the

General Counsel contends that Frey provided shifting explanations for his decision to issue Hennings this written warning, in that Frey initially testified that he disciplined Hennings because she left two clients alone at the residence, and Frey later acknowledged that Hennings had in fact left just one client alone. The General Counsel's contention is meritless. Frey testified that he disciplined Hennings because it is improper for an employee to leave clients—regardless of how many—when the employee is responsible to monitor them. Accordingly, like the judge, we dismiss the complaint allegation that the Respondent violated Section 8(a)(3) when it disciplined Hennings for doing so.

III. THE SECTION 8(A)(1) WORK-RULE ALLEGATIONS

The complaint alleges that the Respondent violated Section 8(a)(1) of the Act by maintaining seven handbook rules: (1) Professional Boundaries, (2) Professional Standards, (3) Conditions of Employment, (4) Misconduct, (5) Canvassing or Soliciting, (6) Employee Professional Relationships, and (7) Reasons for Termination. We find that it will effectuate the policies of the Act to sever these allegations and retain them for further consideration.

In addition to alleging that the discharges of Minor, Driskell, and Martell violated Section 8(a)(3) of the Act, the General Counsel also contends they were unlawful under Section 8(a)(1) on the basis that the Respondent discharged each of these employees pursuant to an allegedly overbroad rule. Having found Minor's discharge violated Section 8(a)(3), we find it unnecessary to pass on whether her discharge was also unlawful under this alternate theory of violation because doing so would not materially affect the remedy.³⁵ As to the discharges of Driskell and Martell, we find no merit to the General Counsel's 8(a)(1) theory of violation because the record fails to demonstrate that the Respondent relied on any allegedly unlawful work rule as a basis for their discharges. The letters of termination issued to Martell in July and to Driskell in September do not cite any of the rules alleged to be unlawful, nor is there any clear indication in the record that the Respondent otherwise relied on any of those rules when it discharged Martell and Driskell.

IV. STRICTER ENFORCEMENT OF RULES IN RESPONSE TO UNION ACTIVITY

The complaint alleges that the Respondent violated Section 8(a)(3) by "chang[ing] its past practice of not

³⁵ Having found it unnecessary to pass on this theory of violation, Chairman Ring does not reach the legal issue of whether an employer violates Sec. 8(a)(1) by disciplining an employee pursuant to an unlawful overbroad work rule.

enforcing its rules, policies, and/or procedures and . . . implement[ing] a new practice of strictly enforcing those rules, policies and/or procedures” in response to employees’ union activities and to the Union’s certification as bargaining representative. The judge did not address this allegation. For the reasons that follow, we find that the Respondent violated the Act as alleged.

An employer violates Section 8(a)(3) when it increases discipline of its employees or more strictly enforces its work rules in response to union activities. *Dynamics Corp. of America*, 286 NLRB 920, 921 (1987), enf’d. 928 F.2d 609 (2d Cir. 1991). “If the General Counsel demonstrates that the pattern of discipline after the commencement of union activity deviated from the pattern prior to the start of union activity, a prima facie case of discriminatory motive is established requiring the Respondent to show that its increased discipline was motivated by considerations unrelated to its employees’ union activities.” *Jennie-O Foods*, 301 NLRB 305, 311 (1991).

Initially, we find that the General Counsel established a prima facie case of discriminatory motivation. Employee Gates testified that Frey “started showing up more after the union.” Employee Jack Hopkins testified that after the union campaign went “public,” “working conditions became difficult, if not oppressive.” Hopkins testified that inspections, which a “co-worker” previously completed on a monthly basis, “became more frequent” and were “now done by a member of the management team.” Hopkins further testified that “inspections which formerly just included things like the smoke detectors, they would go through the kitchen cabinet and pull out every can and inspect every expiration date. There was that kind of pressure put on.” Employees Hennings and Terry Owens corroborated this testimony. Owens, who started working for the Respondent in February 2011, testified that he never saw Frey or Kimberly Krusi (another member of management) visit his assigned residences until “December of 2011 to January of 2012,” when the union campaign was underway. Hennings testified that prior to that campaign, Frey visited her assigned residence “maybe once every two weeks,” but he visited “more frequently” after the union campaign commenced.

Hennings’ additional testimony demonstrates that the Respondent also began to document disciplinary actions more rigorously. Hennings testified that after she received her March 16 letter of reprimand, Client Resource Specialist Callahan explained to Hennings “that she [Callahan] understood what I was going through, but that they were looking at a possible audit and they were having to—when they discipline or terminate[] people, they were now having to document in the files.” The timing

of this new audit policy is telling: the election, which the Union won, took place on March 15, the day before Hennings received the letter of reprimand.³⁶

We also find compelling the undisputed testimony of union negotiator Clifthorne. Clifthorne testified that during the October bargaining session, the parties discussed employee access to their personnel files, including past disciplinary documents and performance evaluations. Clifthorne testified that in the course of this discussion, Frey said: “If people wanted more write-ups, they could have them, starting then.” The Respondent does not dispute this testimony. And on the very day Frey made this comment, the Respondent issued 10 employees written warnings for failing to properly complete client narratives. The Respondent does not dispute the General Counsel’s assertion that, prior to this date, there is no documentary evidence that the Respondent ever disciplined employees for failing to complete narratives. Moreover, in addition to instances of discipline alleged to have violated Section 8(a)(3), discussed above, the General Counsel introduced evidence of over 40 written disciplines issued by the Respondent from April 2012—the month after the Union’s certification—through December 2012. This represented a sharp break from prior practice. Indeed, the Respondent admits that there is “little evidence of discipline” prior to the Union’s arrival and that it only began documenting discipline because unionization purportedly required it to do so. Yet the Respondent cites no specific testimony to confirm that it disciplined employees prior to the Union’s arrival as frequently as it did post-unionization. Accordingly, we find not only that the General Counsel established a prima facie case of discriminatory motivation, but also that the Respondent failed to show that its increased discipline was motivated by considerations unrelated to its employees’ union activities. *Jennie-O Foods*, supra.

Based on the foregoing, we find that the Respondent violated Section 8(a)(3) by more strictly enforcing its disciplinary rules because its employees supported the Union and engaged in union activities. See *St. John’s Community Services—New Jersey*, 355 NLRB 414, 414–415 (2010) (employer violated Section 8(a)(3) where, prior to unionization, it inconsistently enforced its medication administration policy, told an employee that it would go “by the book” because of its employees’ union activity, and discharged an employee under its new “by the book” policy “less than 2 weeks after the [u]nion’s certification”); *Print Fulfillment Services LLC*, 361 NLRB 1243, 1245–1247 (2014) (employer violated Sec-

³⁶ We have dismissed the allegation that the letter of reprimand violated the Act.

tion 8(a)(3) where it responded to a union's request for information concerning its disciplinary policies by announcing and implementing a new policy of "keep[ing] records of any disciplinary actions").

AMENDED CONCLUSIONS OF LAW

1. Kitsap Tenant Support Services, Inc. (the Respondent) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Washington Federation of State Employees, American Federation of State, County and Municipal Employees, Council 28, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees working for Respondent as Direct Service Staff (DSS) or Head of Households (HOHs) in Respondent's Intensive Tenant Support Program (ITS) and Direct Service (DSS) working in Respondent's Supported Living Lite Program (SL Lite Programs), including such programs in Respondent's d/b/a, Olympic Peninsula Supported Living (OPSL) operations, located in or about Kitsap County, Port Angeles, and Port Townsend, Washington; excluding employees working in the Homecare division, Head of Households (HOHs) and Direct Service Staff (DSS) working in the Community Protection Program (CP Program) because they are guards as defined by the Act, and all other guards and supervisors as defined by the Act.

4. The Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to meet with the Union at reasonable times for the purposes of collective bargaining.

5. The Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with information requested on October 29, 2012, concerning State of Washington payments received, which is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

6. The Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with information requested on July 17, 2012, concerning copies of memos and job postings related to the HOH position, which is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

7. The Respondent has violated Section 8(a)(5) and (1) of the Act by unreasonably delaying in furnishing the Union with information requested on June 1, 2012, and July 17, 2012, which is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

8. The Respondent has violated Section 8(a)(5) and (1) of the Act by bargaining in bad faith with no intention of reaching a collective-bargaining agreement.

9. The Respondent has violated Section 8(a)(3) and (1) of the Act by discharging Bonnie Minor on December 7, 2011.

10. The Respondent has violated Section 8(a)(3) and (1) of the Act by placing Alicia Sale and Hannah Gates on administrative leave on December 23, 2011, and discharging Sale and Gates on February 1, 2012.

11. The Respondent has violated Section 8(a)(3) and (1) of the Act by issuing Lisa Hennings the following discipline:

(a) an April 12, 2012 written warning for being 7 minutes late;

(b) an August 10, 2012 letter of direction for staff scheduling;

(c) an August 15, 2012 letter of direction for failing to complete narratives and medical charting;

(d) on February 4, 2013, placing Hennings on administrative leave without pay; and

(e) on February 6, 2013, demoting Hennings.

12. The Respondent has violated Section 8(a)(3) and (1) of the Act by initiating a policy or practice of enforcing its disciplinary rules more strictly than in the past in retaliation for its employees' union activities or support.

13. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

AMENDED REMEDY

Having found that the Respondent engaged in certain unfair labor practices, we shall order the Respondent to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide relevant and necessary information requested by the Union on July 17, 2012, and October 29, 2012, we shall order the Respondent to provide the Union with the requested information.

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing to bargain at reasonable times and in good faith with the Union, we shall order the Respondent to meet at reasonable times and

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bargain in good faith with the Union as the exclusive bargaining representative of its employees in the above-described bargaining unit with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, to embody the understanding in a written agreement.

We grant the General Counsel's request for a 12-month extension of the certification year pursuant to *Mar-Jac Poultry*, 136 NLRB 785 (1962). An extension of the certification year is warranted where an employer "has refused to bargain with the elected bargaining representative during part or all of the year immediately following the certification" and as a result "has taken from the Union the opportunity to bargain during the period when [u]nions are generally at their greatest strength." *Northwest Graphics, Inc.*, 342 NLRB 1288, 1289 (2004) (internal quotations omitted), *enfd.* 156 Fed. Appx. 331 (D.C. Cir. 2005). The appropriate length for the extension must be determined by considering "the nature of the violations, the number, extent, and dates of the collective-bargaining sessions, the impact of the unfair labor practices on the bargaining process, and the conduct of the union during negotiations." *Id.*

Here, the Board certified the Union as the exclusive collective-bargaining representative of the unit employees in March 2012. As explained in greater detail above, because of the Respondent's dilatory tactics, the parties' first bargaining session did not occur until July 2012. The Respondent's dilatory tactics continued through February 2013. The Respondent unlawfully delayed in providing the Union with relevant information as late as September 2012. From at least October 2012 forward, the Respondent unlawfully refused to provide the Union with critical State reimbursement information concerning employee wages and benefits—information the Respondent itself made relevant by the positions it adopted in collective bargaining. Beginning in August 2012 when it put forward its proposed contract, the Respondent pursued contract proposals that were inconsistent with a genuine desire to reach agreement. The Respondent's overall bad-faith bargaining conduct culminated in its April 2013 repudiation of the parties' tentative agreement to include the HOH position in the unit. Accordingly, the Respondent's unlawful conduct interfered with bargaining and undermined the Union throughout the certification year. A 12-month extension of the certification year is necessary to ensure that the Union receives the 1-year period of good-faith bargaining to which it is entitled.³⁷

³⁷ This 12-month extension commences when the Respondent begins to bargain in good faith. See, e.g., *Burrows Paper*, 332 NLRB 82 (2000).

For these same reasons, we also agree with the General Counsel that a bargaining schedule requiring the Respondent to meet and bargain with the Union on a regular and timely basis is appropriate and would effectuate the purposes of the Act. See *All Seasons Climate Control, Inc.*, 357 NLRB 718, 718 fn. 2 (2011) (ordering employer to comply with a bargaining schedule to remedy its unlawful conduct), *enfd.* 540 Fed. Appx. 484 (6th Cir. 2013). Upon the Union's request, we order the Respondent to bargain for a minimum of 15 hours per week, or in the alternative in accordance with some other schedule to which the Union agrees. We shall also require the Respondent to submit written bargaining progress reports every 15 days to the compliance officer for Region 19, and to serve copies of those reports on the Union.

Having found that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employees Bonnie Minor, Alicia Sale, and Hannah Gates, we shall also order the Respondent to make those unit employees whole for any loss of earnings and other benefits suffered as a result of the unlawful discrimination against them. Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with *King Soopers, Inc.*, 364 NLRB No. 93 (2016), *enfd.* in relevant part 859 F.3d 23 (D.C. Cir. 2017), we shall also order the Respondent to compensate Bonnie Minor, Alicia Sale, and Hannah Gates for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, *supra*, compounded daily as prescribed in *Kentucky River Medical Center*, *supra*.

Having found that the Respondent violated Section 8(a)(3) and (1) of the Act by demoting employee Lisa Hennings and placing Hennings on administrative leave without pay, we shall also order the Respondent to make Hennings whole for any loss of earnings and other benefits suffered as a result of the unlawful discrimination against her. Backpay shall be computed in accordance with *Ogle Protection Service, Inc.*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, *supra*, compounded daily as prescribed in *Kentucky River Medical Center*, *supra*.

In addition, we shall order the Respondent to compensate unit employees for any adverse tax consequences of

receiving a lump-sum backpay award and to file, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report with the Regional Director for Region 19 allocating the backpay awards to the appropriate calendar years for each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

We shall also order the Respondent to offer employees Bonnie Minor, Alicia Sale, Hannah Gates, and Lisa Hennings full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

Further, the Respondent shall be required to remove from its files and records all references to (i) the discharges of Bonnie Minor, Alicia Sale, and Hannah Gates, (ii) the administrative leave of Sale and Gates, and (iii) the letters of direction, written warning, administrative leave without pay, and demotion of Hennings, and to notify them in writing that this has been done and that those actions will not be used against them in any way.

Having found that the Respondent violated Section 8(a)(3) and (1) of the Act by initiating a policy or practice of enforcing its disciplinary rules more strictly in retaliation for its employees' union activities or support, we shall order the Respondent to rescind that policy or practice.

ORDER

The National Labor Relations Board orders that the Respondent, Kitsap Tenant Support Services, Inc., Bremerton, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to meet at reasonable times with Washington Federation of State Employees, American Federation of State, County and Municipal Employees, Council 28, AFL-CIO (the Union) as the exclusive collective-bargaining representative of employees in the following appropriate bargaining unit:

All full-time and regular part-time employees working for Respondent as Direct Service Staff (DSS) or Head of Households (HOHs) in Respondent's Intensive Tenant Support Program (ITS) and Direct Service Staff (DSS) working in Respondent's Supported Living Lite Program (SL Lite Programs), including such programs in Respondent's d/b/a, Olympic Peninsula Supported Living (OPSL) operations, located in or about Kitsap County, Port Angeles, and Port Townsend, Washington; excluding employees working in the Homecare division, Head of Households (HOHs) and Direct Service Staff (DSS) working in the Community Protection Program (CP Program) because they are guards as defined

by the Act, and all other guards and supervisors as defined by the Act.

(b) Failing and refusing to bargain collectively with the Union by failing and refusing to furnish the Union with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(c) Failing and refusing to bargain collectively with the Union by unreasonably delaying in furnishing it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(d) Failing and refusing to bargain in good faith with the Union for a collective-bargaining agreement affecting the wages, hours, and working conditions of bargaining-unit employees.

(e) Discharging, demoting, placing on administrative leave, disciplining, or otherwise discriminating against employees because of their support for and activities on behalf of the Union.

(f) Enforcing its disciplinary rules more strictly than in the past in retaliation for its employees' union activities or support.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Beginning within 15 days of the Union's request, meet with the Union at reasonable times and bargain in good faith with the Union as the exclusive bargaining representative of employees in the above-described bargaining unit with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a written agreement. Upon the Union's request, such bargaining sessions shall be held for a minimum of 15 hours per week, or in the alternative on another schedule to which the Union agrees. Respondent shall submit written bargaining progress reports every 15 days to the compliance officer for Region 19, and shall serve copies thereof on the Union.

(b) Furnish to the Union in a timely manner the information requested by the Union on October 29, 2012, regarding payments received from the State of Washington, and on July 17, 2012, concerning memos and job postings related to the HOH position.

(c) Within 14 days from the date of this Order, offer Bonnie Minor, Alicia Sale, Hannah Gates, and Lisa Hen-

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nings full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(d) Make Bonnie Minor, Alicia Sale, Hannah Gates, and Lisa Hennings whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the amended remedy section of this decision.

(e) Compensate Bonnie Minor, Alicia Sale, Hannah Gates, and Lisa Hennings for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each employee.

(f) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Bonnie Minor, Alicia Sale, and Hannah Gates; the unlawful placement of Sale and Gates on administrative leave; and the unlawful letters of direction, written warning, placement on administrative leave without pay, and demotion of Lisa Hennings, and within 3 days thereafter notify them in writing that this has been done and that these actions will not be used against them in any way.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days from the date of this Order, rescind, in writing, its policy or practice of enforcing its disciplinary rules more strictly in retaliation for its employees' union activities or support.

(i) Within 14 days after service by the Region, post at its facilities in Bremerton and Port Angeles, Washington, copies of the attached notice marked "Appendix."³⁸ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices

to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed any of the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the closed facility or facilities at any time since December 7, 2011.

(j) Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the allegations in paragraphs 10(a)-(g) and 13 of the second amended consolidated complaint in Cases 19-CA-074715, -079006, -082869, -086006, -088935, -088938, -090108, -096118, and -099659 are severed and retained for further consideration by the Board.

Dated, Washington, D.C. May 31, 2018

John F. Ring, Chairman

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

³⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to meet at reasonable times with Washington Federation of State Employees, American Federation of State, County and Municipal Employees, Council 28, AFL-CIO (the Union) as the exclusive collective-bargaining representative of our employees in the following appropriate bargaining unit:

All full-time and regular part-time employees working for Respondent as Direct Service Staff (DSS) or Head of Households (HOHs) in Respondent's Intensive Tenant Support Program (ITS) and Direct Service Staff (DSS) working in Respondent's Supported Living Lite Program (SL Lite Programs), including such programs in Respondent's d/b/a, Olympic Peninsula Supported Living (OPSL) operations, located in or about Kitsap County, Port Angeles, and Port Townsend, Washington; excluding employees working in the Homecare division, Head of Households (HOHs) and Direct Service Staff (DSS) working in the Community Protection Program (CP Program) because they are guards as defined by the Act, and all other guards and supervisors as defined by the Act.

WE WILL NOT fail and refuse to bargain in good faith with the Union for a collective-bargaining agreement affecting the wages, hours, and working conditions of our bargaining-unit employees.

WE WILL NOT refuse to furnish, or unreasonably delay furnishing, information requested by the Union that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our bargaining-unit employees.

WE WILL NOT discipline, demote, discharge, place you on administrative leave, or otherwise discriminate against you for supporting the Union or any other labor organization.

WE WILL NOT enforce our disciplinary rules more strictly than in the past in retaliation for your union activities or union support.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, beginning within 15 days of the Union's request, meet with the Union at reasonable times and bar-

gain in good faith with the Union as your exclusive bargaining representative with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a written agreement. Upon the Union's request, such bargaining sessions shall be held for a minimum of 15 hours per week, or in the alternative on another schedule to which the Union agrees.

WE WILL submit written bargaining progress reports every 15 days to the compliance officer for Region 19, and WE WILL serve copies of these reports on the Union.

WE WILL furnish to the Union, in a timely manner, the information requested by the Union on October 29, 2012, regarding payments received from the State of Washington, and on July 17, 2012, concerning memos and job postings related to the HOH position.

WE WILL, within 14 days from the date of the Board's order, offer Bonnie Minor, Alicia Sale, Hannah Gates, and Lisa Hennings full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Bonnie Minor, Alicia Sale, Hannah Gates, and Lisa Hennings whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest, plus reasonable search-for-work and interim employment expenses.

WE WILL compensate Bonnie Minor, Alicia Sale, Hannah Gates, and Lisa Hennings for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Bonnie Minor, Alicia Sale, and Hannah Gates; the unlawful placement of Sale and Gates on administrative leave; and the unlawful letters of direction, written warning, placement on administrative leave without pay, and demotion of Lisa Hennings, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that those actions will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's Order, rescind, in writing, our policy or practice of enforcing our disciplinary rules more strictly in retaliation for your union activities or union support.

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The Board's decision can be found at www.nlrb.gov/case/19-CA-074715 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



Richard Fiol and Elizabeth DeVleming, for the General Counsel.

Gary Lofland (Halverson Northwest Law Group), of Yakima, Washington, for the Respondent.

Terry C. Jensen and SaNni Lemonidis (Robblee Detwiler & Black), of Seattle Washington, for the Union.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this case in trial at Seattle, Washington, on various dates beginning May 28, 2013, and ending November 14, 2013. On February 16, 2012, Washington Federation of State Employees, American Federation of State, County and Municipal Employees, Council 28, AFL-CIO (the Union) filed the original charge in Case 19-CA-074715 alleging that Kitsap Tenant Support Services, Inc. (Respondent) committed certain violations of Section 8(a)(3) and (1) of the National Labor Relations Act (the Act). The Union filed the charge in Case 19-CA-079006 on April 17, 2012. On June 11, 2012, the Union filed the charge in Case 19-CA-082869. On July 25, 2012, the Union filed an amended charge in Case 19-CA-082869. The Union filed amended charges in Case 19-CA-082869 on December 7, 2012, and January 30, 2013, respectively. The Union filed the charge in Case 19-CA-086006 on July 25, 2012. The Union filed the charge in Case 19-CA-088935 on September 10, 2012. On October 9, 2012, the charge was amended. The charge in Case 19-CA-088935 was amended on October 1, 2012, and again on January 10, 2013. The Charge in Case 19-CA-088938 was filed on September 10, 2012. The Union filed amended charges in Case 19-CA-088938 on January 30 and February 8, 2013.

The charge in Case 19-CA-090108 was filed on September 26, 2012, alleging that Respondent violated Section 8(a)(1) and (5) of the Act. The charge in Case 19-CA-090108 was amended on January 10, 2013. On January 10, 2013, the Union filed the charge in Case 19-CA-096118. The charge in Case 19-CA-099659 was filed on March 4, 2013. On June 22, 2012, the Regional Director for Region 19 of the National Labor Relations Board (the Board) issued a consolidated complaint and notice of hearing against Respondent, alleging that Respondent violated Section 8(a)(5), (3), and (1) of the Act.

Respondent filed a timely answer to the complaint, denying all wrongdoing. An order further consolidating cases and amended complaint issued on February 28, 2013. A second amended consolidated complaint was issued on March 27, 2013. Respondent filed timely answers to the complaints, denying all wrongdoing.

The parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. Upon the entire record, from my observation of the demeanor of the witnesses,¹ and having considered the posthearing briefs of the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent Corporation, with an office and principal place of business in Bremerton, Washington, has been engaged in the business of providing residential support services. In the 12 months prior to the issuance of the complaint, Respondent, in conducting its business operations, derived gross revenues in excess of \$250,000. Further, Respondent performed services valued in excess of \$50,000 directly to the State of Washington. Accordingly, Respondent admits, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Respondent's primary business office is located in Bremerton, Washington; it also maintains an office in Port Angeles, Washington. Respondent operates three divisions, home care, tenant support and community protection services. This case involves the Union's attempt to organize Respondent's tenant support services and community protection service operations. The Union was certified as the exclusive representative for direct service staff and head of households in the intensive tenant support program on March 23, 2012. The employees in the community protection services were held to be guards and not included in the bargaining unit.

The Union's organizing campaign began in November 2011. In December 2011 Respondent learned of the Union's campaign and held its first campaign meeting on December 7, 2011. On December 20, the Union filed its petition with Region 19 of the Board seeking to represent a unit of approximately 150 of Respondent's employees in the intensive tenant support services and community protection services programs.

Employee Bonnie Minor was hired by Respondent in June 2008. At the time of her discharge in December 2011, Minor was working as the head of household at Respondent's Olym-

¹ The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings herein, their testimony has been discredited, either as having been in conflict with credited documentary or testimonial evidence, or because it was in and of itself incredible and unworthy of belief.

pus House. In late 2011, Minor was planning Thanksgiving and Christmas parties for Respondent's clients. Minor received calls from other employees that the clients could not afford two parties. Since the Thanksgiving party was only days away, Minor decided to cancel the Christmas party. On December 6, Minor was told by Jamie Callahan, client resource manager, to put the Christmas party back on schedule.

On December 4, Minor became a member of the Union's organizing committee and her picture was printed on a union flyer. On December 7, Minor spoke out in favor of the Union at the Respondent's union campaign meeting. On the morning of December 7, Minor received a phone call from Alan Frey, Respondent's general manager, to tell her to reschedule the Christmas party. He told Minor that she had no right to cancel the party. Minor said she had canceled the party because clients could not afford two parties. Immediately thereafter, Minor rescheduled the Christmas party.

Minor was asked to meet with Frey that afternoon, Minor met with Fry and Human Resources Coordinator Kathy Grice. Frey again told Minor that she had to reschedule their Christmas party. Minor stated that she had already rescheduled the party.

Minor attended Respondent's union campaign meeting shortly after her meeting with Frey. Minor asked Respondent's consultant how much money Respondent was paying him. The consultant declined to answer.

Minor then attended a union meeting. Shortly after the union meeting, Minor received a call from Grice informing her that she was being terminated. Respondent's discharge letter states that Minor failed to follow the protocol set forth by a direct supervisor in regards to a client party and gift exchange. The letter also criticizes Minor for her poor attitude and judgment crossing professional boundaries, misrepresenting information in regards to client and staff causing distress to the clients.

Frey testified that he learned on the morning of December 7, that Minor had told three clients that Frey had screamed and yelled at her and had been mean to her. Frey had a meeting with Minor that afternoon in which she admitted that she told clients that Fry had screamed and yelled at her. When Frey asked why Minor had done so, she answered that Frey was treating her like her father. She admitted that Frey had not yelled or screamed. Frey explained that what Minor had done was "triangulation" and inappropriate. The harm was to clients and the trust Frey had built with those clients over the years. I find support for Frey's explanation in the testimony of expert witness Allan Comte.

Employee Alicia Sale began working for Respondent in 2008. Employee Hannah Gates began working for Respondent in 2010. Sale and Gates had their pictures on a prounion flyer. On December 20, 2011, Sale and Gates were working at Respondent's "men's house." That morning Sale noticed a bruise and scratch on client R. Sale notified Gates of the situation and Gates called the head of household who was at the "women's house." Gates documented the injury in the client's folder. Client R then complained to Sale of a stomachache. Sale and Gates checked R's temperature and bowel movements. At that point the head of household called back and said that Fry and

Mieke Middelhoven would be coming to the house. Gates told the head of household about R's stomachache.

That morning, Frey and Mieke Middelhoven, program coordinator, arrived at the men's house. Upon arriving at the house, Frey inspected client R's injury and determined that the bruise had come from client R's wheelchair. Frey instructed Gates and Sale to pad and tape the wheelchair. Fry spoke to the client and asked whether client R had requested to see a doctor. Client R responded that he had. According to Frey, Sale stated that client R had been asking to see a doctor all morning. At the hearing, Sale denied this. According to Frey, Sale stated that there was not enough staff to take client R to the doctor. Middlehoven made arrangements for Sale to go to the women's house and for the head of household to take client R to the doctor.

The following day, Frey returned to the men's house. He found that the wheelchair had not been repaired as he had directed. He taped the wheelchair himself. Frey placed Sale and Gates on administrative leave for failing to provide medical attention to client R and for failing to tape the wheelchair as directed. Both Sale and Gates denied that client R had requested to go to the doctor. It is clear that failure to take a client who has requested medical attention to a doctor is abusive.

On December 23, Sale and Gates were informed by Grice that they were being placed on administrative leave, because they had not taken client R to the doctor and had not timely repaired his wheelchair. Fry reported this incident to the State of Washington.

On February 1, 2012, Fry discharged Sale and Gates for the incidents of December 20. The State of Washington later dismissed the charges against Sale and Gates substantially because it could not rely on the testimony of client R.

Employee Terry Owens started working for Respondent in the community protection program in February 2011. On December 9, 2011, Owens attended Respondent's union campaign meeting. Owens spoke out in favor of the Union at that meeting. Owens met with Frey on December 12 and presented Frey with 10 questions. Three weeks later, Owens testified for the Union in the representation case.

On February 14, 2012, Frey observed a locked cabinet in the house where Owens worked. Owens explained that client J had agreed to store junk food in the locked cabinet and that the head of household would control client J's food intake. Owens told Frey that client J still had access to other food cabinets; Frey also observed postings that were degrading to client J. The next day Frey called a meeting with Owens. Frey placed Owens on administrative leave. The head of household was suspended pending investigation and later resigned.

Frey told Owens that he was on administrative leave so that Frey could investigate the locked cabinet. About a week later Owens met with Frey. Owens was discharged on March 28. The Respondent claims that Owens asked to be discharged. Owens was terminated for his treatment of client J; placing restrictions on client J. Frey testified that he observed Owens behavior toward client J and found it to be inappropriate, Frey testified that Owens seemed angry and failed to understand that his approach had been wrong.

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Employee Gary Martell was hired by Respondent in October 2011. In December 2011, Martell began working in the supportive living program. Martell worked with different clients in different locations. On May 22, 2012, the Union notified Respondent that Martell had been elected to the Union's bargaining team. Martell attended a bargaining session on June 4.

Martell attended a paperwork meeting in the first week of June with Callahan and Parsons. The ledger part of Martell's paperwork was blank. Callahan asked why the paperwork was not done and Martell did not make an excuse. Callahan informed Frey that Martell's paperwork was not complete. Frey took Martell to another room and told him to complete the paperwork.

A few minutes later, Frey entered the room and stated that Martell was being placed on administrative leave because his paperwork was incomplete. Frey testified that Martell had not performed any work after being placed in the back room. Martell received a letter dated June 8 from Frey stating that he was on administrative leave. Included in the letter were allegations that Martell's schedule included overlaps indicating that Martell was in two places at one time. (GC Exh. 129.) On June 12, Martell met with Frey. According to Frey, at this meeting, Martell acknowledged that there was no excuse for not completing his paperwork. Martell admitted missing service hours for clients.

After being placed on administrative leave, Martell went to a client's home and told the client that he had been placed on administrative leave. Such conduct is prohibited by Respondent. On July 19, 2012, Martell was terminated by Frey. Martell was terminated for not completing his paperwork, not providing service hours, and visiting a client while on administrative leave.

Employee Johnnie Driskell began working for Respondent in February 2004. In May 2011, Driskell was demoted from head of household to caregiver. Driskell was later reinstated as a head of household. Driskell was a leader in the union campaign; her picture was included with union supporters in the Union's mid-December flyer. Driskell was later elected to the Union's bargaining team.

On June 6, 2012, Driskell was presented with a written warning for being late for her June 4 shift. Driskell had left a phone message on June 1, stating that she was switching shifts with another employee on June 4, so that she could participate in the Union's bargaining training. Driskell was to report at 4 p.m. on June 4. However, on June 4, Driskell did not report until 4:15 p.m. Overtime was paid to an employee who worked until Driskell arrived.

On Sunday June 24, Frey wrote Driskell regarding a plan of care meeting held without the presence of a member of management. The purpose of plan of care meeting is to review the care needed and the hours of service allocated for the care of the client. Driskell did not call the meeting. According to Frey, Driskell had worked with the client only 2 months and that a member of management needed to be present. Management requested an additional meeting. As a result of that meeting, the hours of service to the client were increased. Respondent claims that Frey's letter to Driskell was not disciplinary but rather provided guidance to Driskell.

On July 19, 2012, Driskell received a disciplinary warning for loaning client money. Driskell claimed that she did what she had done in the past. Frey met with Driskell and a union representative. Driskell claimed that everyone loaned money to clients. Frey cited policy against loaning money to clients. Driskell then claimed that it was not a loan but a gift.

On July 22, while off duty, Driskell received a call from the house where she was head of household. The staff reported that two clients were not getting along and they requested Driskell's assistance. Driskell drove to the house and found that two clients had struggled over a television remote control. Driskell met with Frey the next day but did not mention the incident. After meeting with Frey, Driskell reported the incident to management. Driskell described the incident as pushing. The next day, Frey placed Driskell on suspension.

Respondent placed Driskell on administrative leave pending the investigation of a client-to-client assault. Driskell had not seen any meaningful contact between the clients. Frey reported Driskell to the State of Washington for not reporting a client-to-client assault. A meeting was held between Frey and Driskell and a union representative on August 3. Frey ended the meeting as a result of the union representative's conduct. Frey held another meeting with Driskell on August 14. Frey did not appreciate Driskell's attitude at the meeting. On August 23, Frey terminated Driskell's employment.

Employee Lisa Hennings was hired by Respondent in November 2009. In early 2010, Hennings was promoted to a head of household position. In November 2011, Hennings became involved in the Union's organizing campaign. Her picture appeared on the Union's flyer in December 2011. In December 2012, Hennings attended a meeting at Respondent's Port Angeles office. At the meeting Hennings indicated to Frey that she was in favor of the Union. In May 2012, Hennings was elected to the Union's bargaining committee.

On March 16, 2012, Hennings received a letter of reprimand for loaning clients money. On a trip to a grocery store with three clients, Hennings lent the clients money so that they could pay for all their groceries.

On April 12, Hennings received a warning for being late. Hennings had called the head of household to say that she would be a few minutes late. The next day, Hennings spoke with Grice. Grice stated that Hennings had not called the office. Hennings had never before been disciplined for being a few minutes late.

On August 6, Hennings attended a bargaining session as a member of the Union's bargaining team. On August 9, Hennings was writing down the shifts to be worked at her house. There had been confusion due to employee absences. Frey told Hennings that she had better not be scheduling because there had been testimony in the Board representation case that head of households did not do scheduling. Hennings answered that she was not scheduling but merely helping management. Frey checked with his office and found that Hennings was not helping management with the schedule.

On August 16, Hennings received a letter of direction regarding monthly narratives and medication charting. Hennings was cited for too few narratives of client progress. There were two medical errors in the reports.

On August 20, Hennings received a written warning for failure to work her assigned shift. On August 17, Frey had driven by the house where Hennings worked and observed her getting out of her car alone. Frey thought Hennings was at another house supporting clients at a party. Hennings explained that she had left the party to aid her daughter and that she had asked another staff person to watch her client. Hennings was written up for not working her assignment and not notifying the office to secure coverage for her client.

In December 2012, Frey and M. E. Closser, Respondent's owner, approached Hennings and complained that the Union had marched on Closser's home. Hennings said that she was not there. Closser and Frey pressed the issue but Hennings denied responsibility.

On February 4, 2013, Frey called Hennings and stated that he had concerns with her work and that she would be placed on administrative leave while he investigated. Thereafter, Hennings was demoted from her position as head of household. There was no reduction in pay. Frey was concerned about her caregiving and training, completing necessary paperwork, completing narratives, leaving clients unattended, and not calling the office. Hennings requested a transfer to the graveyard shift where there was less responsibility.

The Union was certified as the exclusive collective-bargaining agent on March 20, 2012. The Union requested bargaining dates on April 23. On May 21, Respondent agreed to bargaining dates. On May 21, the Union informed Respondent of the identity of the 5 employee members of the bargaining committee. Respondent did not meet with the Union until July 13.

At the July 13 meeting, the Union discussed its first proposal which it provided to Respondent the previous week. Respondent made no proposals at that meeting. On August 6, Respondent made its first proposal. The Union opposed Respondent's proposals on management rights, at-will employment, lack of union security, and removing head of households from the bargaining unit. The Union contended that Respondent's proposals on management rights and at-will employment would nullify nearly everything but compensation that the Union was attempting to bargain for. No tentative agreements were reached but the parties agreed to meet again on September 17.

The parties met on September 17. Prior to that meeting the Union had provided Respondent with modified proposals. Respondent refused to discuss certain proposals. The parties next met on November 26. The parties reached an agreement on the bargaining unit and agreed to meet on December 18. Respondent later canceled the December 18 meeting. Respondent finally agreed to meet on February 27, 2013. That date was canceled and the parties agreed to meet on March 11 and 12.

In May 2012, Respondent sent the Union a letter in which it stated that it reserved the right for its "Board" to void any tentative agreements. The Union responded asking, "[T]o which Board are you referring to?" Respondent answered that it was referring to its board of directors. The Union sent a request for information on June 1. Respondent answered that request on June 11. On July 17, the Union made a request for information regarding the head of household position. Respondent provided

information on October 12, 2012. The Union requested another information request on October 29. The Union requested documents and/or information regarding the money spent on unit employees. Respondent refused to furnish such information.

Respondent proposed a broad management-rights provision. Further, Respondent proposed an employment at-will provision. The Union sought just cause language. Respondent's proposed grievance provision did not apply unless there was a demonstrated specific violation of the collective-bargaining agreement. In its progressive discipline proposal, Respondent proposed that "the degree of discipline is solely within the judgment" of Respondent. Respondent slightly modified its management-rights proposal on October 16. Eventually the Union agreed substantially to Respondent's management-rights clause.

The General Counsel contends that Respondent failed and refused to bargain in good faith regarding the head of household position. On September 6, Respondent told the Union that it would bargain to impasse over the elimination of the head of household position and later implement its position. On November 26, the parties reached tentative agreement on the bargaining unit which included the heads of household. However, on April 12, 2013, Respondent stated that it would seek to eliminate the head of household position and create a supervisory household manager position.

The General Counsel contends that Respondent maintained the following rules in violation of Section 8(a)(1):

Professional Standards: In the course of your work, you may have occasion to learn of matters which are confidential. It is your ethical obligation to consider all information about residents, clients, their families, and fellow employees, as privileged. You are expected to keep this knowledge in strict confidence. Never discuss any facet of Kitsap Tenant Services, Inc. or its programs either in or outside of your work site where they can be overheard by unauthorized people. To protect yourself from accidental infringement of the policy, please refer all matters to your Coordinator.

Professional Boundaries: When an employee is no longer employed by KTSS, Inc., they are required to sign a confidentiality agreement stating they have not and will not reveal Client information or confidential matters learned while in the employ of the agency. Further, the employee must certify that they have not, nor in any way been party to or knowingly permitted:

- Disclosure of any confidential matters, or trade secrets of Kitsap Tenant Services, Inc.
- Retention or duplication of any confidential materials or documents issued to or used by the employee during employment.

Employee Professional Relationships: You understand that you are not allowed to discuss any issue regarding your job performance or relationships with co-workers or supervisors with Clients or within earshot of Clients.

Canvassing or Soliciting: Staff members are expected to keep such activities from occurring on our premises and work sites.

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Employees are not allowed to sell, push products, or philosophy, religion to Clients or staff.

Conditions of Employment: Employee agrees not to divulge, publish, or otherwise make known to unauthorized persons or to the public any information contained in the course of providing services, where release of such information may possibly make the person or persons whom are receiving such services, supervisors, Clients families and/or fellow Caregivers identifiable. Employees should recognize that unauthorized release of confidential information might subject them to civil liability under the provisions of State law and/or dismissal from KTSS, Inc.

Reasons for Termination:

- *Violation of Client and/or program confidentiality.
- * Violation of policy and procedures of company.
- * Misconduct as defined in the orientation manual.
- * Failure to follow the Employee Professional Relationships Contract.
- *Failure to sign and follow the Maintaining Client Confidentiality.

Misconduct: Giving Client information or opinions of the inner workings of the office (similar to rules previously mentioned).

III. CONCLUSIONS

The Rules

The Board held in *Kinder-Care Learning Centers*, 299 NLRB 1171 (1990), that employees have a Section 7 right to communicate regarding their terms and conditions of employment to other employees, an employer's customers, the media, and the public. In *Beth Israel Hospital v. NLRB*, 437 US 483 (1978), it was held that a hospital could prohibit solicitations in patient care areas because "the primary function of a hospital is patient care and . . . a tranquil atmosphere is essential to carrying out that function." Here, Respondent has a fiduciary duty to keep client information confidential. Its clients are developmentally disabled and vulnerable, and should be protected concerning any information regarding their identity or plan of treatment. Information regarding Respondent's relationship with its caregivers could cause emotional problems for Respondent's developmentally disabled clients. Under these circumstances, I view patient care areas as anywhere the client may be. Thus, I find that Respondent's rule regarding discussing any issues related to job performance or relationships with coworkers or supervisors with clients or within earshot of clients' is necessary and a lawful exception to the general rule.

Employees have a Section 7 right to communicate regarding their terms and conditions of employment to other employees, an employer's customers, the media, and the public. When an employee is no longer employed by Respondent he or she is required to sign a confidentiality agreement stating they have not and will not reveal client information or confidential matters learned while in the employ of the agency. I find this rule too broad and thus violative of Section 7 of the Act.

The Employee Discipline

In cases involving dual motivation, the Board employs the

test set forth in *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399-403 (1983). Initially, the General Counsel must establish by a preponderance of the credible evidence that antiunion sentiment was a "motivating factor" for the discipline or discharge. This means that the General Counsel must prove that the employee was engaged in protected activity, that the employer knew the employee was engaged in protected activity, and that the protected activity was a motivating reason for the employer's action. *Wright Line*, supra, 251 NLRB at 1090. Unlawful motivation may be found based upon direct evidence of employer animus toward the protected activity. *Robert Orr/Sysco Food Services*, 343 NLRB 1183, 1184 (2004). Alternatively, proof of discriminatory motivation may be based on circumstantial evidence, as described in *Robert Orr/Sysco Food Services*, supra:

To support an inference of unlawful motivation, the Board looks to such factors as inconsistencies between the proffered reasons for the discipline and other actions of the employer, disparate treatment of certain employees compared to other employees with similar work records or offenses, deviations from past practice, and proximity in time of the discipline to the union activity. *Embassy Vacation Resorts*, 340 NLRB 846, 848 (2003).

If the General Counsel has satisfied the initial burden, the burden of persuasion shifts to Respondent to show by a preponderance of the credible evidence that it would have taken the same action even in the absence of the employee's protected activity. If Respondent advances reasons which are found to be false, an inference that the true motive is an unlawful one may be warranted. *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966); *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982). However, Respondent's defense does not fail simply because not all the evidence supports its defense or because some evidence tends to refute it. *Merrilat Industries*, 307 NLRB 1301, 1303 (1992). Ultimately, the General Counsel retains the burden of proving discrimination. *Wright Line*, supra, 251 NLRB at 1088 fn. 11.

The General Counsel has established both Bonnie Minor's union activities and the knowledge or constructive knowledge of those activities by Respondent. There is no doubt that Minor took the actions for which she was terminated. The issue as to Minor is whether or not the conduct was the reason for the discharge rather than her protected union activities. It is therefore the termination process that must be examined. The termination of Minor involved multiple steps and multiple actions by Respondent's Frey. Each must be evaluated under the standard set forth above.

First, I find that the actions of Frey regarding the Christmas party did not involve disparate treatment of Minor. Thus, I find that the initiation of the meeting respecting the incident was not improper. I further find that in telling clients that Frey had yelled and screamed at her, Minor engaged in a major violation of policy.

Having gotten past the investigative process, scrutiny must fall on the discharge decision. I have considered the demeanor of the witnesses, the arguments of the parties on brief and the record as well on this critical issue. I find that the General Counsel has not met his initial burden to show that antiunion sentiment was a “motivating factor” for Minor’s discharge.

Considering the context, I find that the General Counsel has not been able to demonstrate by a preponderance of the credible evidence that the discharge involving Minor was based on antiunion sentiment. Finally, I find there was no antiunion animus in the final discharge decision taken or its being carried out as set forth above.

Given this finding, it follows that the General Counsel has failed to prove that Bonnie Minor was fired for union activities as alleged in the complaint. Therefore I shall dismiss those complaint paragraphs that apply to Minor.

In cases involving dual motivation, the Board employs the test set forth in *Wright Line*, 251 NLRB 1083, 1089 (1980), enf’d. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399–403 (1983). Initially, the General Counsel must establish by a preponderance of the credible evidence that antiunion sentiment was a “motivating factor” for the discipline or discharge. This means that General Counsel must prove that the employee was engaged in protected activity, that the employer knew the employee was engaged in protected activity, and that the protected activity was a motivating reason for the employer’s action. *Wright Line*, supra, 251 NLRB at 1090. Unlawful motivation may be found based upon direct evidence of employer animus toward the protected activity. *Robert Orr/Sysco Food Services*, 343 NLRB at 1184. Alternatively, proof of discriminatory motivation may be based on circumstantial evidence, as described in *Robert Orr/Sysco Food Services*, supra:

To support an inference of unlawful motivation, the Board looks to such factors as inconsistencies between the proffered reasons for the discipline and other actions of the employer, disparate treatment of certain employees compared to other employees with similar work records or offenses, deviations from past practice, and proximity in time of the discipline to the union activity. *Embassy Vacation Resorts*, 340 NLRB at 848.

When the General Counsel has satisfied the initial burden, the burden of persuasion shifts to Respondent to show by a preponderance of the credible evidence that it would have taken the same action even in the absence of the employee’s protected activity. If Respondent advances reasons which are found to be false, an inference that the true motive is an unlawful one may be warranted. *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966); *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enf’d. 705 F.2d 799 (6th Cir. 1982). However, Respondent’s defense does not fail simply because not all the evidence supports its defense or because some evidence tends to refute it. *Merrilat Industries*, 307 NLRB 1301, 1303 (1992). Ultimately, the General Counsel retains the burden of proving discrimination. *Wright Line*, supra, 251 NLRB at 1088, fn. 11.

The General Counsel has established union activity by Alicia Sale and Hannah Gates. The issue here involves Respondent’s reason for the discharge. Frey heard from client R that he had requested to see a doctor. Sale and Gates initially stated that they did not have the staff to take client R to the doctor. Frey asked them to tape client R’s wheelchair and this was not done. Frey reported the failure to take client R to the doctor to the State of Washington. Here, I find that Frey acted upon his belief that Sale and Gates had improperly failed to take client R to the doctor. Thus, I find that Respondent has established that these employees would have been discharged even in the absence of union activities.

Terry Owens

In all cases turning on employer motivation, causation is determined pursuant to *Wright Line*, 251 NLRB 1083 (1980), enf’d. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Initially, the General Counsel must prove, by a preponderance of the evidence, that protected conduct was a “motivating factor” in the employer’s decision. To establish this showing, the General Counsel must adduce evidence of protected activity, Respondent’s knowledge of the protected activity, Respondent’s animus toward the protected activity, and a link or nexus between the protected activity and the adverse employment action. *Farmer Bros. Co.*, 303 NLRB 638, 649 (1991). If the General Counsel makes this initial showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the employees’ union activity. *American Gardens Management Co.*, 338 NLRB 644, 645 (2002), citing *Taylor & Gaskin, Inc.*, 277 NLRB 563 fn. 2 (1985), both incorporating *Wright Line*, supra.

The General Counsel has established that Owens was engaged in union activities and that Respondent had knowledge of those activities. Respondent established that Owens had taken part in restricting client J’s access to food supplies and was aware of, if not the author of improper notices to client J. Frey observed and found wanting Owens interactions with client J. Accordingly, I find that Respondent established that Owens would have been discharged even in the absence of his union activities.

Gary Martell

The General Counsel has established that Martell engaged in union activities and that Respondent had knowledge of such activities. However, Martell failed to complete his required paperwork. Martell had no excuse for this failure. Martell was suspended pending an investigation. Martell improperly visited a client at the client’s home and told the client that he had been suspended. Thereafter, Frey discharged Martell. Again, I find that Respondent has established that Martell engaged in conduct for which he would be discharged even in the absence of his union activities.

Johnnie Driskell

The General Counsel has established both Driskell’s union activities and the knowledge of those activities by Respondent. There is no doubt that Driskell took the actions for which she was terminated. The issue as to Driskell is whether or not the conduct was the reason for the discharge rather than her pro-

KITSAP TENANT SUPPORT SERVICES, INC.

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tected union activities. It is therefore the termination process that must be examined. The termination of Driskell involved multiple steps and multiple actions by Respondent's Frey. Each must be evaluated under the standard set forth above.

First, I find that the action of Frey regarding Driskell's being late on June 6 questionable. Driskell had made arrangements to cover her shift and called when she would be late. Driskell received a letter of direction for not notifying Respondent of a plan of care meeting. This letter was not discipline. Further, this action was based on Driskell's conduct and not her union activities. Driskell received a warning for loaning a client money. This was in violation of company policy.

On July 22 Driskell intervened in a client-to-client dispute. She described the incident as pushing. Frey believed that there was client-to-client battery and reported this incident to the State of Washington. Driskell met with Frey on July 23 but did not mention the client dispute.

I have considered the demeanor of the witnesses, the arguments of the parties on brief, and the record as a whole on this critical issue. I find that the General Counsel has not met his initial burden to show that antiunion sentiment was a "motivating factor" for Driskell's discharge.

Considering the context, I find that the General Counsel has not been able to demonstrate by a preponderance of the credible evidence that the discharge involving Driskell was based on antiunion sentiment. Finally, I find there was no antiunion animus in the final discharge decision taken or its being carried out as set forth above.

Given this finding, it follows that the General Counsel has failed to prove that Johnnie Driskell was fired for union activities as alleged in the complaint. Therefore I shall dismiss those complaint paragraphs that apply to Driskell.

Lisa Hennings

In all cases turning on employer motivation, causation is determined pursuant to *Wright Line*, 251 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Initially, the General Counsel must prove, by a preponderance of the evidence, that protected conduct was a "motivating factor" in the employer's decision. To establish this showing, the General Counsel must adduce evidence of protected activity, Respondent's knowledge of the protected activity, Respondent's animus toward the protected activity, and a link or nexus between the protected activity and the adverse employment action. *Farmer Bros. Co.*, 303 NLRB 638, 649 (1991). If the General Counsel makes this initial showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the employees' union activity. *American Gardens Management Co.*, 338 NLRB at 645, citing *Taylor & Gaskin, Inc.*, 277 NLRB 563 fn. 2 (1985), both incorporating *Wright Line*, supra.

The General Counsel has established that Lisa Hennings engaged in union activities and that Respondent had knowledge of those activities. Hennings received a letter of reprimand for loaning money to three clients. I find that this discipline was based on Hennings conduct and not her union activities. Hennings received a warning for being 7 minutes late. Other employees were late for longer periods of time without receiving

discipline. Respondent did not explain this discrepancy.

Frey disciplined Hennings for staff scheduling. Frey said that since employees had testified that head of households had not done scheduling, Hennings should not be scheduling. Frey did not explain the inconsistency where Respondent had offered evidence in the representation case that heads of household did scheduling for their households.

Hennings received discipline for not doing narratives and for errors in medication charting. I find this discipline to be based in business reasons and, therefore, not discriminatory. Hennings received a warning for an incident on August 20. Frey had observed Hennings driving in her car when she was supposed to be at a party with a client. I find no violation in this discipline.

Respondent ultimately demoted Hennings for missing medical appointments, errors in medical charts, and her past disciplines. I find that the warnings to Hennings for being late and for scheduling were unlawful. To the extent that these warnings played a part in her demotion, I find the demotion unlawful.

The Alleged Refusal to Bargain

In determining good-faith bargaining, the Board examines the totality of the party's conduct both at and away from the bargaining table including delay tactics, failure and/or delay in providing information, unpalatable bargaining demands, and refusal to explain bargaining positions. *Fruehauf Trailer Services*, 335 NLRB 393 (2001). The determination of a party's subjective good faith in bargaining depends on an examination of the "totality of the circumstances". *NLRB v. Tomco Communications*, 567 F.2d 871, 883 (9th Cir. 1978). The Supreme Court has held that "the Board may not either directly or indirectly, compel concessions or otherwise sit in judgment on the substantive terms of collective bargaining agreements." *H. K. Porter Co. v. NLRB*, 397 U.S. 99, 106 (1970).

Section 8(a)(5) and (d) of the Act obligates parties to "confer in good faith with respect to wages, hours, and other terms and conditions of employment." *NLRB v. Borg-Warner Corp.*, 356 U.S. 342, 344 (1958). The good-faith requirement means that a party may not "negotiate" with a closed mind or decline to negotiate on a mandatory subject with a closed mind or decline to negotiate on a mandatory bargaining subject. "While Congress did not compel agreement between employers and bargaining representatives, it did require collective bargaining in the hope that agreements would result." *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956). Sincere effort to reach common ground is of the essence is of the essence of good-faith bargaining. *NLRB v. Montgomery Ward & Co.*, 133 F.2d 676, 686 (9th Cir. 1943); *NLRB v. Reed & Prince Mfg. Co.*, 118 F.2d 874, 885 (1st Cir.), cert. denied 313 U.S. 595 (1941).

The quantity or length of bargaining does not establish or equate with good-faith bargaining. *NLRB v. American National Insurance Co.*, 343 U.S. 395, 404 (1952). The Board will consider the "totality of the conduct" in assessing whether bargaining was done in good faith. *NLRB v. Suffield Academy*, 322 F.3d 196 (2d Cir. 2003).

The General Counsel argues that Respondent delayed bargaining and engaged in dilatory tactics. Then after bargaining

commenced, Respondent continued to delay. It canceled meetings in July and August. As a result, the parties only met six times since March 2012. In my view, this is evidence of bad faith. *Fruehauf Trailer Services*, 335 NLRB 393 (2001).

The General Counsel further argues that Respondent put forth proposals that were repugnant to the Union. First, the General Counsel alleges that Respondent's proposed management-rights provision was so broad as to be repugnant to the Union. However, the Union agreed to Respondent's proposal with a minor exception.

The General Counsel further argues that Respondent's proposal to change the head of household position to a management position was evidence of bad faith. Section 8(a)(5) prohibits a party's insistence upon a permissible subject as a condition precedent to entering an agreement and precludes a good-faith impasse. *Borg-Warner Corp.*, 356 U.S. at 347-349. However, Respondent did not insist on this provision to impasse. No impasse was ever reached.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent violated Section 8(a)(5) and (1) of the Act by refusing to delayed bargaining after the certification for almost 4 months.
4. Respondent violated Section 8(a)(1) by maintaining a rule prohibiting former employees from revealing client information or confidential matters learned while in the employ of the agency.
5. Respondent violated Section 8(a)(3) and (1) by disciplining Lisa Hennings for being late and for scheduling employees.
6. Respondent violated Section 8(a)(3) and (1) for demoting Lisa Hennings from her position as head of household.
7. Respondent's conduct above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action to effectuate the purposes and policies of the Act. Accordingly, I shall order Respondent to resume collective bargaining with the Union.

Having discriminatorily demoted employee Lisa Hennings, Respondent must offer her reinstatement and make her whole for any loss of earnings and other benefits, computed on a quarterly basis from date of demotion to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons*, 283 NLRB 1173 (1987).

Respondent must also be required to remove any and all references to its unlawful discipline of Hennings, from its files and notify Hennings in writing that this has been done and that the unlawful discipline will not be the basis for any adverse action

against her in the future. *Sterling Sugars, Inc.*, 261 NLRB 472 (1982).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.²

ORDER

The Respondent, Kitsap Tenant Support Services, Inc, Bremerton and Port Angeles, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Refusing to bargain collectively by delaying bargaining for 4 months.
 - (b) Maintaining a rule whereby former employees are prohibited from revealing client information or confidential matters learned while in the employ of the agency.
 - (c) Disciplining or demoting employees for engaging in union activities.
 - (d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) Upon request, meet and bargain with the Union as the exclusive collective-bargaining representative of its employees in the appropriate bargaining unit described below:

All full-time and regular part-time employees working for Respondent as Direct Service Staff (DSS) or Head of Households (HOHs) in Respondent's Intensive Tenant Support Program (ITS) and Direct Service (DSS) working in Respondent's Supported Living Lite Program (SLI lite Programs), including such programs in Respondent's d/b/a, Olympic Peninsula Supported Living (OPSL) operations, located in or about Kitsap County, Port Angeles, and Port Townsend, Washington; excluding employees working in the Homecare division, Head of Households (HOHs) and Direct Service Staff (DSS) working in the Community Protection Program (CP Program) because they are guards as defined by the Act, and all other guards and supervisors as defined by the Act.

with respect to rates of pay, hours of employment, and other terms and conditions, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Within 14 days from the date of this Order, offer Lisa Hennings full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed but for her unlawful demotion.

(c) Make Hennings whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of the decision.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discipline of Hennings,

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

KITSAP TENANT SUPPORT SERVICES, INC.

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and within 3 days thereafter notify her in writing that this has been done and that the discipline will not be used against her in any way.

(e) Within 14 days after service by the Region, post at its facilities in Bremerton and Port Angeles, Washington, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 16, 2012.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 19, a sworn certification of a responsible official on a form provided by Region 19 attesting to the steps the Respondent has taken to comply herewith.

Dated, Washington, D.C. June 4, 2014

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively by delaying bargaining for 4 months.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT maintain a rule which prohibits former employees from discussing matters learned while employed by us.

WE WILL NOT discipline and/or demote employees because of their union activities.

WE WILL NOT make reference to the permanently removed materials in response to any inquiry from any employer, employment agency, unemployment insurance office, or reference seeker and we will not use the permanently removed material against this employee.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL upon request, meet and bargain with the Union as the exclusive collective-bargaining representative of our employees in the appropriate bargaining unit described below:

All full-time and regular part-time employees working for Respondent as Direct Service Staff (DSS) or Head of Households (HOHs) in Respondent's Intensive Tenant Support Program (ITS) and Direct Service (DSS) working in Respondent's Supported Living Lite Program (SLI lite Programs), including such programs in Respondent's d/b/a, Olympic Peninsula Supported Living (OPSL) operations, located in or about Kitsap County, Port Angeles, and Port Townsend, Washington; excluding employees working in the Homecare division, Head of Households (HOHs) and Direct Service Staff (DSS) working in the Community Protection Program (CP Program) because they are guards as defined by the Act, and all other guards and supervisors as defined by the Act

with respect to rates of pay, hours of employment, and other terms and conditions, and if an understanding is reached, embody such understanding in a signed agreement.

WE WILL make Lisa Hennings whole for her loss of earnings, if any, for unlawful discipline and demotion, with interest.

WE WILL remove from our files any reference to the unlawful discipline of Hennings.

KITSAP TENANT SUPPORT SERVICES, INC.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/19-CA-074715 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 19

In the Matter of:

KITSAP TENANT SUPPORT SERVICES,
INC.,

Respondent,

and

WASHINGTON FEDERATION OF STATE
EMPLOYEES, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL 28, AFL-CIO,

Charging Party.

Cases: 19-CA-74715
19-CA-79006
19-CA-82869
19-CA-86006
19-CA-88935
19-CA-88938
19-CA-90108
19-CA-96118
19-CA-99659

The above-entitled matter came on for hearing pursuant to notice, before **Administrative Law Judge Jay Pollack** at the National Labor Relations Board, Jackson Federal Building, 915 Second Avenue, Seattle, Washington 98174 on Tuesday, May 28th, 2013.

ARGIE REPORTING SERVICE
5900 Nieman Road, Suite 200
Shawnee, KS 66203
(913) 422-5198

A P P E A R A N C E S

On Behalf of the Counsel for General Counsel:

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ELIZABETH DeVLEMING, ESQ.

NATIONAL LABOR RELATIONS BOARD - REGION 19

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On Behalf of the Employer:

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On Behalf of the Petitioner:

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1 Q And by WACS, you're referring to the state regulations in
2 Washington?

3 A That's correct, yes.

4 Q And you said you're in charge of everything. Are you in
5 charge of the people who were also listed in the Complaint to
6 Supervisors?

7 A Yes.

8 Q And approximately, how many people are you in charge of?
9 Have you had a number, approximately?

10 A Around 160.

11 **(General Counsel's Exhibit 40, marked for identification)**

12 Q I'm going to show you --

13 MR. FIOL: Before I start, you will note that the number
14 is 40. I premarked a number of documents in anticipation of
15 possibly getting them stipulated to, but from now on, it starts
16 at 40 and will continue on.

17 JUDGE POLLACK: Okay.

18 MR. LOFLAND: Are we jumping to 40?

19 MR. FIOL: Yes, I just wanted to explain --

20 MR. LOFLAND: Are we then giving up GC-2 through 39?

21 MR. FIOL: No.

22 MR. LOFLAND: That really mucks up the record for me.

23 JUDGE POLLACK: I think we can follow it. They are just
24 numbers. Go ahead.

25 MR. FIOL: Okay. Thank you.

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1 JUDGE POLLACK: They don't have to come in an order.

2 Q BY MR. FIOL: I want to show you, Mr. Frey, there is a
3 document in front of you, it's marked for identification as
4 General Counsel's Exhibit No. 40. Do you see that?

5 A I do, thanks.

6 Q Are you familiar with this document?

7 A I am.

8 Q And can you please tell the Court what this document is?

9 A Yes, the Policy and Procedure Manual for Kitsap Tenant
10 Support.

11 Q And this Policy Manual, is it in effect during the times
12 of 2011 and 2012?

13 A Yes.

14 Q Okay.

15 MR. FIOL: Your Honor, I move for the introduction of
16 General Counsel's Exhibit No. 40 into the record.

17 MR. LOFLAND: No objection.

18 MR. JENSEN: No objection.

19 JUDGE POLLACK: Alright. GC-40 is received.

20 **(General Counsel's Exhibit 40, received into evidence)**

21 Q If you could take a look at this document and turn to page
22 number 7? Do you recognize the, what's on this page?

23 A I do.

24 Q Okay. Can you please tell the Court what this is?

25 A It is an Organizational Chart.

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- 1 Q And it is an Organizational Chart of what year?
- 2 A Well, you know, this is revised 2011.
- 3 Q Okay. And if you could look at the boxes for me?
- 4 A Uh-huh.
- 5 Q Which would be the third row, there are five positions?
- 6 A That's correct.
- 7 Q Okay. Starting with on the left, Mieke Gergely?
- 8 A Uh-huh.
- 9 Q Okay. And going through, who is the next person?
- 10 A Jamie Callahan.
- 11 Q And she is a Client Resource Specialist, correct?
- 12 A That's correct, yes.
- 13 Q And there is an arrow pointing down below her, correct?
- 14 A Yes.
- 15 Q And it says, Direct Service Staff?
- 16 A That's correct.
- 17 Q What does that mean?
- 18 A It means that those folks, those 1, 2, 3, 4, 5 people are
- 19 above the Direct Service Staff in the Organizational Chart.
- 20 Q Approximately how many people are, the numbers, are in the
- 21 Direct Service Staff?
- 22 A A hundred and sixty.
- 23 Q And is Ms. Callahan on the same hierarchy level as Ms.
- 24 Gergely?
- 25 A At that time, she was, yes.

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1 Q Has that, and what, has there come a time when that
2 changed?

3 A Well, you now, these positions have changed quite a bit
4 since then.

5 Q Well, with respect to Ms. Callahan, did there come a time
6 when that may have changed?

7 A Yeah, I mean, she's, she's still the Client Resource
8 Specialist. Mieke has taken on several new titles.

9 Q I see. And is Ms. --

10 A Generally, you know, for example, today I'm gone and Mieke
11 is the Senior Staff there today. But generally she's in line,
12 you know, is she in line with these folks, sure.

13 Q And that includes Kathy Grice and Dawn Worthing?

14 A That's correct.

15 Q And Molly Parson?

16 A Correct.

17 MR. FIOL: Your Honor, I'm going to ask your permission,
18 at this time I want to continue asking direct, asking questions
19 of Mr. Frey in a leading fashion, as a witness under 611(c).

20 JUDGE POLLACK: Go ahead.

21 Q And Mr. Frey, I'm going to show you a document -- let's go
22 off the record so I can stand up and distribute them.

23 **(General Counsel's Exhibit 41, marked for identification)**

24 MR. LOFLAND: We are now going, he's going to be handed a
25 copy of the Subpoena, which we've already dealt with. And I

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1 late, will be deemed timely.

2 **(General Counsel's Exhibits 42 through 82, received into**
3 **evidence)**

4 Q And just to clarify, these documents, these are all
5 written by you, if you would just take a look.

6 A Yes, they appear to be written by me.

7 Q And these documents either say Written Warning?

8 A Yes.

9 Q And there is also a few, if you would look, that say
10 Letter of Direction?

11 A Correct.

12 Q And a Letter of Direction is considered a warning,
13 correct?

14 A In my eyes, it's less than a warning.

15 Q What is it?

16 A It is letting somebody know that they've made a mistake
17 that isn't quite a written warning.

18 Q Does it go into their file?

19 A Yes.

20 Q Okay. And is that used for further discipline?

21 A It, what I use it for is just so that I have, it's notes
22 for later.

23 Q Is the employee told that's what it is?

24 A Yeah. That's why we call it a Letter of Direction instead
25 of a formal Written Warning.

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1 Q And how about a Letter of Correction? What is the
2 difference between that and --

3 A Letter of Correction would mean you would need to
4 definitely make that change. Letter of Direction would mean
5 I'm directing you that you've, that there is something that is
6 going on that you need, you know, a formal, I think is write-up
7 about.

8 Q And this Letter of Correction, does that go into the
9 employee's file?

10 A Definitely.

11 Q And is that Letter of Correction used again later for
12 further discipline?

13 A I don't know that I would use it for discipline. I would
14 definitely refer to it.

15 Q And what would you refer it for?

16 A If somebody had an issue that came up, I'd want to go
17 through their file and see if those issues had come up before.

18 Q And I just want, well, I'll move on. Please take one
19 minute off the record while I just gather a few more documents.

20 JUDGE POLLACK: Off the record, please.

21 *[Off the record]*

22 JUDGE POLLACK: Back on the record.

23 **(General Counsel's Exhibits 83 through 89, marked for**
24 **identification)**

25 Q Alright, Mr. Frey, we're back on the record. Can you

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1 Q And Kathy is the person, she reports to you?

2 A That is correct.

3 MR. FIOL: Your Honor, I'm going to move for the
4 introduction of General Counsel's 92 through 96. I'm not
5 putting in General Counsel's 90 and 91.

6 MR. JENSEN: 90 what?

7 MR. FIOL: 90 and 91.

8 MR. LOFLAND: No objection.

9 JUDGE POLLACK: Alright. General Counsel's 92 through 96
10 are received.

11 **(General Counsel's Exhibits 92 through 96, received into**
12 **evidence)**

13 Q And Mr. Frey, I want to talk about a subject called
14 narratives, okay? Are you familiar with that subject with
15 respect to your Company?

16 A Yes.

17 Q And narrative, as it applies to your Company, is telling
18 the story of each client's activities, is that correct?

19 A As it relates to the goal, correct.

20 Q And right, they focus on the goal that each client is
21 working towards?

22 A Yes.

23 Q Now, and with these narratives, each daily entry that you
24 put in needs to talk about something that is related to that
25 goal and that client?

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1 A Not necessarily. It, and it doesn't have to be done
2 daily. If something, my rule is, if something fantastic
3 happened, they should document it or if it relates to the goal.

4 Q So if it doesn't need to be done daily, how often does it
5 need to be done?

6 A Well, we ask that it be done at least weekly. What I
7 suggest everybody do a daily, I would guess on an eight hour
8 shift, you could probably do it daily. I've worked in direct
9 cares and it is easy to do daily. Plenty of stuff to work on.

10 Q It has to be handed on a monthly basis?

11 A That's correct, yes.

12 Q Is the due date, what, the 5th of each new month, is that
13 correct?

14 A Yeah, well there is paperwork meetings, so it's not, it
15 used to be the 5th, but now we actually have the staff or the
16 Head of Household bring the paperwork in and the meeting could
17 be anytime the first two weeks of the month.

18 Q And during that paperwork meeting is when the person who
19 is responsible for bringing in the narrative, brings it in at
20 that, at that time?

21 A If it is a household, then it is the Head of Household,
22 If it is a Supportive Living Light staff, then they bring their
23 own in.

24 Q And a Supportive Living Light staff, that means that it is
25 an individual person, there is no Head of Household, is that --

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1 A That's correct, yes.

2 Q So those employees who work in that department, the
3 individuals that don't have a Head of Household --

4 A The Light staff, yes.

5 Q The Light staff. They have to do the same thing?

6 A Correct.

7 Q And also the Head of Households?

8 A Correct.

9 Q And the paperwork that these Head of Households and these
10 people in the Light Divisions though, referred to, it is more
11 than just a narrative, correct, because of the paperwork that
12 has to be handed in?

13 A There is a variety of different types of paperwork.

14 Q It includes a Monthly Activities Calendar?

15 A That's correct, yes.

16 Q The paperwork goes, so, through safety checks, correct?

17 A If one was done, yes.

18 Q And a safety check, is that done every month?

19 A Quarterly.

20 Q Quarterly?

21 A Yes. It's done every month, let me take that back. It's
22 done monthly but turned in quarterly.

23 Q Turned in --

24 A It's on a quarterly sheet.

25 Q And it is done in order to check the safety of the house?

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1 A No, those are called house checks. Safety check is for
2 fire drills, flashlight batteries.

3 Q I see. In addition to all of this that you just testified
4 to, they are also responsible to maintain a financial ledger?

5 A Some staff would be.

6 Q And who are those people who would have to hand that in?

7 A Well, its Supportive of Light would be responsible for
8 their own, but then in the household, it is usually the Head of
9 Household that does the financials. Sometimes it's handled out
10 of the office, as well.

11 Q Is that also handed in once a month?

12 A In the office, it is kept ongoing, it's in a computer
13 system.

14 Q How about for the person who is on house itself, the Head
15 of Household?

16 A Yeah, monthly during their paperwork meeting, they turn in
17 a...

18 MR. FIOL: May I ask the Court for another minute just to
19 gather some documents together?

20 JUDGE POLLACK: Off the record, please.

21 *[Off the record]*

22 **(General Counsel's Exhibits 97 through 114, marked for**
23 **identification)**

24 Q MR. FIOL: Mr. Frey, I've put in front of you a series of
25 documents. They are marked for identification as General

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1 Counsel's No. 97 through No. 114.

2 A Yes.

3 Q And I ask you to look at the first four from General
4 Counsel's 97 through 100. Do you see that in front of you, it
5 says, "Top Safety Worksheets?"

6 A Correct.

7 Q Okay. And there is four of them?

8 A Yes.

9 Q Are these top, these were issued in '06, in 2006. Are
10 they still in use now?

11 A We still have a Top Safety Program, yes.

12 Q Okay. And this worksheet, Top Safety Worksheet is still a
13 worksheet that has to be, it is part of the, part of the
14 paperwork?

15 A Yeah, it's not part of the client paperwork, it is a staff
16 requirement for ongoing training.

17 Q Okay. Could you explain that?

18 A It's a, it's a, it takes place of our monthly safety
19 meeting.

20 Q And then from General Counsel's No., it's on the top, I
21 couldn't fit every, you know, on the bottom of each page
22 through 114, if you would just take one moment to look through
23 all of those?

24 A How far would you like me to go ahead?

25 Q To the end, to General Counsel's 114.

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1 A Okay.

2 Q And it would seem these are all documents that were
3 prepared by your Company in its regular course of business,
4 correct?

5 A They appear to be without, without going through each one
6 exactly, I couldn't tell you that. They appear to be.

7 Q I would prefer.

8 A I would literally have to read each one to tell you for
9 sure. So if you would like me to sit here and read each one --

10 Q Well, by looking, do you need to look at each one?

11 A What they appear to be is things that were in the normal
12 course of business action.

13 Q Okay. And these would be a document that is in use today
14 with your Company, correct?

15 A Correct.

16 Q Okay. And it is prepared by someone who works under you?

17 A That is correct.

18 MR. FIOL: I move for the introduction of General
19 Counsel's 97 through General Counsel's 114.

20 MR. LOFLAND: I'm still looking, Judge. That's fine, no
21 objections.

22 JUDGE POLLACK: Alright. General Counsel's 97 through 114
23 are received.

24 **(General Counsel's Exhibits 97 through 114, received into**
25 **evidence)**

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1 Counsel's 116 into the record.

2 MR. LOFLAND: No objection.

3 MR. JENSEN: Just 116?

4 MR. FIOL: Just 116.

5 MR. JENSEN: No objection.

6 JUDGE POLLACK: Okay. GC-116 is received.

7 **(General Counsel's Exhibit 116, received into evidence)**

8 Q Now, if you would look at General Counsel's 116, the date,
9 do you see that?

10 A Yes.

11 Q It says December 8th?

12 A Yes.

13 Q That was of 2011?

14 A Yes.

15 Q Was she terminated that date or was it the day before?

16 A I can't recall that without record in front of me, I can't
17 remember.

18 Q Would you, do you know who was involved in her
19 termination?

20 A Yes, several of us were.

21 Q And who were those people involved in her termination?

22 A Myself, Kathy and I believe Mieke was involved, as well.

23 Q Anyone else other than the three of you?

24 A I don't believe so. It's been quite some time.

25 Q Now, according to this letter, Ms. Minor was fired for

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1 failing to follow protocol?

2 A Yeah.

3 Q And that's regarding a client party and gift exchange,
4 correct?

5 A That's what it says, yes.

6 Q Now, it says here, "As set forth by a direct supervisor?"

7 A That's correct, yes.

8 Q And who was that direct supervisor who she had to report
9 to regarding this party?

10 A Myself. I mean, I'm the direct supervisor. It could have
11 been any of the folks in our office, as well.

12 Q Do you know with regard to this particular incident who
13 she would have had to report to?

14 A It may well be Jamie, because Jamie had a conversation
15 with her about client resources for the party, so it may well
16 have been her as well.

17 Q Jamie Callahan?

18 A Yeah.

19 MR. JENSEN: I didn't hear an answer.

20 MR. FIOL: Oh, his answer was Jamie Callahan.

21 A That's correct.

22 Q There is a reference to a gift exchange. Now that takes
23 place at this party?

24 A Yes, it does.

25 Q And the party that we're referring to, that is the

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1 Christmas party, correct?

2 A Client Christmas party, yes.

3 Q There is a protocol, or the word protocol is used, is that
4 something that is in writing?

5 A Let me read what it says. It's not said in writing. The
6 protocol was determined by Jamie, if that's, I'm guessing the
7 protocol had to do with splitting the food up and the gifts up
8 equitably.

9 Q And so, and by, when you say Jamie, is that Jamie
10 Callahan?

11 A That is correct, yes.

12 Q So this is, as far as you know, an oral protocol, verbal?

13 A Well, it is in WAC as far as splitting up things among
14 clients equitably.

15 Q And do you know the particular WAC that we --

16 A I do not have that in front of me. I know it is something
17 we're evaluated on each year when they go through our financial
18 records, they want to make sure that each item in the house is
19 split up equitably in the home.

20 Q You also, Mr. Grice, I guess, who wrote the letter --

21 A Yes.

22 Q -- mentions that on two other occasions, referring to
23 Minor, "You showed a poor attitude."

24 A Yes, that's what it says.

25 Q Do you know what these two occasions are about?

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1 A I'd have to review my notes. I don't, I couldn't tell you
2 off the top of my head.

3 Q Did you take notes regarding this?

4 A I mean I, I need to go through and look at her employee
5 file and go through that, that's how I would probably tell.

6 Q So it's possible that tomorrow when the documents come in,
7 we may be able to look at those notes?

8 A Yeah, if there is notes in the file. Showing, looking at
9 the file will probably give me the information that I need, I'm
10 guessing.

11 Q That's fine.

12 A Again, it is 2011, it's been some time.

13 Q And I, these two violations or occasions, do you know when
14 that happened?

15 A I don't. Again --

16 Q Look at the notes?

17 A Correct.

18 Q Okay. These two violations, were they discussed by you
19 and other members of the group that Ms. Vergely (phonetic) and
20 Ms. Grice, were these discussed by the three of you?

21 A Possibly.

22 Q Okay. And again, to your knowledge, were any notes
23 written about --

24 MR. LOFLAND: Asked and answered.

25 MR. FIOL: No, no, I'm asking about his particular

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1 incident.

2 A Same thing, I would need to go through the file.

3 Q In addition to any notes, would there be any memos or e-
4 mails?

5 A Nothing that wouldn't already be in the file.

6 Q Thank you. So just for clarification, there are three
7 reasons for Minor's discharge? That is the --

8 A That's what it says in her letter, yes.

9 Q Okay. And it is three reasons in the letter, correct?

10 Two occasions --

11 MR. LOFLAND: Asked and answered --

12 MR. FIOL: I just want to be, clarification --

13 MR. LOFLAND: May I please talk to the Judge. I object,
14 it's been asked and answered, the document also speaks for
15 itself.

16 JUDGE POLLACK: Okay. Overruled. Let's go ahead.

17 MR. FIOL: Thank you.

18 Q I just wanted for clarification, Mr. Frey, there are three
19 reasons for Ms. Minor being terminated, correct?

20 A That's what it says in the document, yes.

21 Q And that's the protocol on gift exchange and parties?

22 A That's what it says in the document.

23 Q And two occasions?

24 A That's what the document states.

25 Q Will you look at the next document in front of you? It is

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1 marked for identification as General Counsel's Exhibit 117.

2 A Okay.

3 Q It is a letter from the Unemployment Department. Did you
4 see this before?

5 A I may or may not, I don't know.

6 Q We, are you normally involved when someone files a claim?

7 A If HR involves me, if they have reason to involve me.

8 Some of the time they do it on their own, sometimes they bring
9 it to my attention.

10 Q With respect to this particular letter, can you answer --
11 would this be a letter that you would get?

12 A I can't answer definitively.

13 Q Who would I be able to talk to who can answer definitively
14 regarding this letter?

15 A It depends on who filled it out. I don't know who --

16 Q Well, who received it? I'm talking about who received it?

17 A It comes into our office and likely somebody that was in
18 our HR Department.

19 Q Would that be Ms. Grice?

20 A Could be, yes.

21 Q Are you aware --

22 JUDGE POLLACK: Regarding that document, to save, I'm not
23 going to give that any weight.

24 MR. FIOL: I know, I know that. And it was, and it's not
25 for that. It's just, it's more, if you look at the back and

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1 right now I'm not going to go any further, because he states
2 that he cannot identify and it's not for the decision, but
3 something else in there that I wanted to use it for, but it's
4 obvious that I can't get it in through him. I'm going to
5 through Ms. Grice, unless he wanted to stipulate that these are
6 records that come into your office.

7 THE WITNESS: They come into our office, yes.

8 MR. LOFLAND: Mr. Frey doesn't get the ability to make
9 that stipulation. That comes through Counsel, so it is
10 improper to ask him.

11 JUDGE POLLACK: Yes. Okay, just in the interest of time,
12 I don't intend to give any, I'm not going to give any weight to
13 that.

14 MR. FIOL: No, normally you don't and I understand that.
15 Again, as I stated, it wasn't for the --

16 JUDGE POLLACK: Alright. Let's go.

17 MR. FIOL: Alright.

18 Q BY MR. FIOL: Going back to Ms. Minor's two, the two
19 occasions when she -- was she, was insubordination one of the
20 reasons why Ms. Minor was fired?

21 A She was insubordinate, yes.

22 Q Then I want you, if you would, please take a look at
23 General Counsel's Exhibit No. 118?

24 A Okay.

25 Q This particular caregiver documented events, are you

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1 familiar with this particular document?

2 A Yes, yes.

3 Q Dealing with Barbara Mitchell?

4 A Correct.

5 Q And dealing with Muriel Spence?

6 A Yes.

7 Q Okay. And Ms. Mitchell was not fired, correct?

8 A No, she was not fired.

9 Q She resigned on her own, months later, after this
10 incident?

11 MR. LOFLAND: Neither relevant or material.

12 JUDGE POLLACK: Well, let's get an answer. Go ahead.

13 A Yeah, she resigned.

14 Q Okay. Ms. Spence, do you see where there is a notation
15 that, on Ms. Spence?

16 A Yes, which notation?

17 Q The second one, November 22nd, 2011?

18 A I see there is writing. What, what are you looking,
19 having me look at?

20 Q Well, that's the time, the incident took place on 11/17
21 and 11/18, correct?

22 A It says here, 11/17 and -- I see the 16th, I see the 17th.
23 What's the question, sir?

24 Q Was Ms. Spence, was Ms. Spence fired for this incident?

25 A No.

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1 MR. FIOL: Your Honor, I move for the introduction of
2 General Counsel's No. 118.

3 MR. LOFLAND: Objection on the grounds of relevancy.

4 MR. JENSEN: No objection here.

5 JUDGE POLLACK: Okay. How is this relevant?

6 MR. FIOL: It's relevant if, as he states, that Ms. Minor
7 was fired for insubordination and here's reports of two other
8 people who it states very clearly were involved in
9 insubordination and I wanted to get an answer, were they fired.

10 JUDGE POLLACK: Alright. I'll receive it.

11 **(General Counsel's Exhibit 118, received into evidence)**

12 MR. FIOL: Thank you.

13 MR. JENSEN: Was 116 offered or intended to be offered?

14 MR. LOFLAND: It was offered and admitted, I believe.

15 MR. FIOL: Yeah.

16 MR. JENSEN: 116 is admitted?

17 JUDGE POLLACK: Yes.

18 MR. JENSEN: Okay.

19 JUDGE POLLACK: So 118 is received.

20 Q BY MR. FIOL: I want to move on to, the next document is
21 General Counsel's Exhibit 119.

22 A Yes.

23 Q And that has to do with the termination of Alicia Sale?

24 A Yes.

25 Q Did that letter come from you?

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1 A It did.

2 MR. FIOL: I move for the introduction of General
3 Counsel's Exhibit No. 119.

4 MR. LOFLAND: No objection.

5 MR. JENSEN: No objection.

6 JUDGE POLLACK: GC-119 is received.

7 **(General Counsel's Exhibit 119, received into evidence)**

8 Q Now, in addition to Ms. Sale, Hannah Gates was also
9 terminated on the same date, correct?

10 A That's correct.

11 MR. LOFLAND: I'm sorry for the interruption. Mr. Jensen
12 was, just had a concern whether using the word "Client, Robert
13 C," needed to be redacted and I said that it did not, because
14 it doesn't identify the client. You can use the first name and
15 the initial or initials.

16 JUDGE POLLACK: Okay.

17 MR. LOFLAND: I apologize for the --

18 THE WITNESS: That's our normal protocol, is first name
19 and last initial.

20 JUDGE POLLACK: Okay.

21 Q I'll repeat the question. In addition to Ms. Sale, Hannah
22 Gates was also terminated on the, on February 1?

23 A And I don't have that exact date. She was terminated.

24 Q She was terminated?

25 A Yes.

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1 Q They both worked at the same house though, correct?

2 A They did, yes.

3 Q And they were both terminated for the same reasons?

4 A Yes.

5 Q Now, as stated in this letter, the reason for Alicia
6 Sale's termination --

7 A Yes.

8 Q -- was that the client asked to be transported to the
9 doctor?

10 A Yes.

11 Q And that the client, Robert C, had cuts and bruises?

12 A Yes.

13 Q She wasn't terminated because he had cuts and bruises.

14 Q Why was she terminated then?

15 A She did not, when she was asked to cover the bruises up,
16 she did not, or the, the, there was a sharp point on the
17 wheelchair that was, we deemed to have caused the bruises and
18 the cuts and she was asked to cover them up and she did not.

19 Q So that was the reason why she was fired?

20 A That was one of the reasons, yes.

21 Q Is the other reasons still good for you, as well, the one
22 where --

23 A She was --

24 Q -- failed to seek medical assistance?

25 A That's correct, for both reasons.

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1 Q So both reasons. Even though it is not in front of us,
2 Did Ms. Gates, also, was she fired for the same two reasons as
3 --

4 A I believe so. Again, if it was in front of me, I could --

5 Q Yeah, I apologize for that, it's just that I have, I can
6 only give you what I have, I don't have that letter, but I know
7 they worked, you testified that they worked together?

8 A That's correct, yes.

9 Q I want you to look at the next document, that's General
10 Counsel's 120. And this, this document was prepared by Mieke
11 Gergely?

12 A Yes.

13 Q And it's regarding the incident on December 20th?

14 A Correct.

15 MR. FIOL: I move for the introduction of General
16 Counsel's No. 120.

17 A May I note, she has a new last name as well.

18 Q Yeah, I was gonna say that.

19 A It's Midihoven (phonetic) now. Just so you know.

20 MR. LOFLAND: No. 120 is entitled Incident Management
21 Report?

22 MR. FIOL: Yes.

23 MR. LOFLAND: Okay. Because mine is not marked. There it
24 is, up in the --

25 MR. FIOL: Yeah, no, yeah, it's on the side.

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1 JUDGE POLLACK: Alright.

2 Q Now --

3 JUDGE POLLACK: 120 is received.

4 **(General Counsel's Exhibit 120, received into evidence)**

5 Q Going back to this date, this incident on December 20th,
6 you and Mieke went to the house that morning, correct?

7 A That's correct, yes.

8 Q And you went there after receiving a phone call from
9 Jessica Lanzoratta, correct?

10 A That's correct.

11 Q Ms. Lonzoratta informed you that the client had some
12 bruises on her?

13 A That's correct, yes.

14 Q Now, Ms. Lanzoratta, at that time, was the Head of
15 Household for that house, correct?

16 A And another house, yes. She was working off-site that day
17 at the other house.

18 Q Ms. Gates, Ms. Hannah Gates and Ms. Sale reported to Ms.
19 Lanzoratta, correct?

20 A She was their direct supervisor, Head of Household, yes.

21 Q Now, you went to the house, the two ladies continue
22 working that day?

23 A They were there when I got there.

24 Q Okay. How about when you left?

25 A Yes.

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1 Q And to your knowledge, were they scheduled to work the
2 next day?

3 A I can't --

4 Q Okay.

5 A -- I don't have a schedule --

6 Q But they -- and I'm sorry. If you can recall? You and
7 Mieke were at the house at about, between 9 and 10 o'clock that
8 morning?

9 A The time of incident, 9 a.m., yeah, between 9 and 10 I
10 would guess. We're five minutes away at the office, so yeah.

11 Q And do you recall about what time you left?

12 A I don't have that exact time. I was there, we were there
13 15, 20 minutes.

14 Q And did you go back to the office?

15 A Likely.

16 Q I want you to take a look at the next document. It is
17 General Counsels' Exhibit No. 121.

18 A Okay.

19 Q That letter is directed to you, sir, right?

20 A Yes, it is.

21 Q If you look at the very top, the transmission time,
22 December 20th?

23 A Got to hold it farther away.

24 Q It's hard, I know.

25 A December 20th, yes.

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1 Q Yeah, 1404 and 1403?

2 A Okay.

3 Q Is that known as 2 o'clock Pacific --

4 A That's what my Navy father says, 2:04.

5 Q Okay.

6 MR. FIOL: I move for the introduction of General
7 Counsel's Exhibit no. 121.

8 MR. LOFLAND: I don't think it is relevant and material.

9 MR. JENSEN: No objection.

10 JUDGE POLLACK: Well, I guess an argument is going to be
11 that the, discharge is at issue here, related to this and the
12 argument is the timing, so I will receive General Counsel's
13 121.

14 **(General Counsel's Exhibit 121, received into evidence)**

15 Q And if you would look at the next document that's before
16 you, it is on the left hand side, General Counsel's No. 122.

17 A I have it in front of me.

18 Q Now this report, this Incident Management Report was
19 written by Dawn Worthing, right?

20 A That's correct, yes.

21 Q And at the bottom it states 12/23, correct?

22 A That is correct, yes.

23 Q And at the very bottom, it notes that, Alicia Sale and
24 Hannah Gates were then taken off their shift?

25 A That's what it states, yes.

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1 Q On the 22nd, correct?

2 A That's what it states, yes.

3 MR. FIOL: I move for the introduction of General

4 Counsel's --

5 MR. JENSEN: No objection.

6 MR. FIOL: -- 122.

7 MR. LOFLAND: No objection.

8 JUDGE POLLACK: General Counsel's 122 is received.

9 **(General Counsel's Exhibit 122, received into evidence)**

10 Q And they were placed on administrative leave as of the

11 22nd? And, I mean, by that, I apologize, it's Gates and Sale?

12 A Correct.

13 Q And the report says on it, and if you look at GC-122,

14 there is a box that says DDD Field Services?

15 MR. LOFLAND: Say it again, I couldn't hear.

16 MR. FIOL: I'm sorry. There is a box, a small box where

17 it says Notification on the, like right across from where it

18 says General Counsel Exhibit.

19 A Yes, I see it.

20 Q What is DDD Field Services?

21 A It's where, it's the State of Washington's Field Service

22 Office in Bremerton, so that's where the case worker for this

23 particular client would preside, that's where he would, that's

24 where his desk would be.

25 Q And then below it, there is a box that says CRU?

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1 A That's correct. Complaint Resolution Unit. So anytime
2 there is a, any sort of question about abuse or neglect, as
3 managerial reporters we would, we would either make the phone
4 call, send a fax.

5 Q And do they contact you at all during their investigation?

6 A The CRU?

7 Q Yes.

8 A Sometimes.

9 Q And how about the DDD? What do they do?

10 A That's the case worker, so he would, he would get this and
11 then he would have to pump it up the chain to his supervisor
12 and let them know what he had found.

13 Q Do you recall getting any correspondence from an
14 investigator from the Department of Health?

15 A Yes.

16 Q Rodney Johnson?

17 A I believe that was his name.

18 Q And was there any correspondence between you and your
19 office and Mr. Johnson regarding this?

20 A We had a face-to-face.

21 Q You did?

22 A Yes.

23 Q And in addition to the face-to-face, were there any e-
24 mails or any other correspondence?

25 A Either he called me that afternoon or we came back, I

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1 can't remember. But he told me what his, what the results
2 were.

3 Q And when did he call you?

4 A I can't remember if it was that day or the next day, it's
5 just -- I know the, I know what the conversation was, but I
6 just don't remember exactly when.

7 Q And that was the conversation you testified that he called
8 you to let you know what the results were?

9 A Not a formal results, but just what he, what he found.

10 Q What did he find?

11 MR. LOFLAND: Objection. Hearsay.

12 JUDGE POLLACK: Well, it's not being offered for the truth
13 of the matter asserted, but go ahead.

14 MR. LOFLAND: If it's not being offered for the truth of
15 the matter, what relevancy does it have? Of course, he's
16 trying to offer it for the truth of the matter.

17 MR. JENSEN: Well, I think it goes to --

18 JUDGE POLLACK: It's not --

19 MR. FIOL: It's to his state of mind as well --

20 JUDGE POLLACK: Go ahead, go ahead.

21 MR. LOFLAND: State of mind by who? By Mr. Frey?

22 MR. FIOL: By what he did afterwards.

23 JUDGE POLLACK: Go ahead.

24 A Restate, please.

25 Q I, the question was, what did he tell you. He said, you

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1 said that he called you to let you know the results?

2 A Yeah, he told me that Robert, the client, Robert C
3 wouldn't be a very good witness and that he wouldn't be able
4 to, he wouldn't stand up on the stand. So he would likely not
5 have any finding because of that, but obviously something
6 happened.

7 Q And do you recall the date of this conversation?

8 A I do not, I'm sorry.

9 Q And up, and did you terminate then Gates and Sale before
10 this conversation with Johnson?

11 A I don't, I just can't remember, I'm sorry.

12 Q Would you normally wait for the results of an
13 investigation?

14 A No. Sometimes, I would, if it was a CRU, we might wait
15 for that result. The Department of Health is a different body.
16 They are just there to check up and their (inaudible) license.
17 CRU is to see, to actual put a formal charge of abuse and
18 neglect.

19 Q And this did go to CRU, correct?

20 A It was sent to the CRU.

21 Q And did you hear back from CRU?

22 A I don't believe we did. Which isn't uncommon, especially
23 if we terminated.

24 Q Jackie Cavanaugh, she's an employee of KTSS?

25 A She is, yes.

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1 Q And you would look at, I can't, ah, there it is, General
2 Counsel's 123.

3 A Yes, I have it in front of me.

4 Q And you reported her to CRU on or about December 6 of
5 2011, correct?

6 A 12/6/11, 6 p.m., called. That's what it states.

7 MR. FIOL: I move for the introduction of -- can I go off
8 the record for a second?

9 JUDGE POLLACK: Off the record, please.

10 *[Off the record]*

11 A If I may, real quick, you asked if I called and I didn't
12 call, they were called, likely Dawn Worthing called, just to
13 clarify.

14 JUDGE POLLACK: Thank you.

15 MR. FIOL: I don't know if I've moved -- 123 has that been
16 admitted? Then, I move for the admission of General Counsel
17 123.

18 JUDGE POLLACK: Is there any objection?

19 MR. LOFLAND: I don't know the relevancy.

20 JUDGE POLLACK: Okay. What is the relevancy of this?

21 MR. FIOL: Well, these are other people who have been put
22 on leave and I just wanted to get to the punch line.

23 MR. LOFLAND: I'm having trouble, could --

24 MR. FIOL: That's because of dispartreatment (phonetic),
25 if I'd be allowed to finish my answer.

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1 JUDGE POLLACK: Okay. Go ahead.

2 Q So, and also, at this point, then I would want to show you
3 General Counsel's No. 124.

4 A Yes, I have it in front of me.

5 MR. FIOL: 123 was received.

6 JUDGE POLLACK: It wasn't received.

7 MR. FIOL: It wasn't?

8 JUDGE POLLACK: No, I --

9 MR. FIOL: I'm sorry, I apologize --

10 JUDGE POLLACK: -- I'm waiting for you to explain why I
11 should receive it.

12 MR. FIOL: Oh, and I answered, my response, Your Honor, I
13 apologize, was that there is a relevance objection and my
14 response is that it's relevant because this is an example of
15 someone who was placed on leave, reported, not terminated and -
16 -

17 JUDGE POLLACK: Alright. Alright. I'll receive it.

18 MR. FIOL: Thank you.

19 **(General Counsel's Exhibit 123, received into evidence)**

20 Q I just want to then look at 124.

21 A I have it in front of me.

22 Q Okay. And that's Mr. Closser?

23 A That was to Mr. Clossser, yes.

24 Q Okay, from you?

25 A That is correct.

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1 Q Okay.

2 MR. FIOL: I move for the introduction of General
3 Counsel's 124.

4 MR. LOFLAND: No objection.

5 JUDGE POLLACK: General Counsel's 124 is received.

6 **(General Counsel's Exhibit 124, received into evidence)**

7 MR. LOFLAND: May I please, there keeps getting beeping
8 noises from the, behind us, so somebody's got some sort of
9 device that is continually on. It's not from Counsels' table,
10 it is from the audience. I think it is Tim or somebody. Okay.
11 (Discussion where sound is coming from)

12 JUDGE POLLACK: Alright. Please continue.

13 MR. FIOL: Thank you.

14 Q BY MR. FIOL: And going back, just completing the story
15 with regard to Ms. Cavanaugh, her case was eventually closed on
16 October 17th of 2012, correct?

17 A That's correct.

18 Q And she stayed working the whole period of time while she
19 was on leave, correct?

20 A She was double staff, so she was never unsupervised with a
21 client.

22 Q Is she still working?

23 A She is.

24 Q I want you to take a look at General Counsel's No. 125.

25 A I have it in front of me.

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1 Q Okay. Is that, that's prepared by Dawn Worthing, correct?

2 A Yes.

3 Q It is a document that is kept in the normal and usual
4 course of your business, correct?

5 A Yes.

6 MR. FIOL: I move for the introduction of General
7 Counsel's No. 125.

8 MR. LOFLAND: I need a moment.

9 JUDGE POLLACK: Go ahead.

10 MR. LOFLAND: Again, I don't see relevance of --

11 Q Was Mr. Goodman fired for this incident?

12 A I don't believe this was, no.

13 MR. LOFLAND: Sorry, I couldn't hear an answer.

14 A I don't believe he was.

15 MR. FIOL: Again, I make my request for --

16 JUDGE POLLACK: Okay. I'll receive it.

17 **(General Counsel's Exhibit 125, received into evidence)**

18 Q Have you looked at General Counsel's No., on the very
19 back, 126?

20 A Yes, I have it.

21 Q Is that the same Mr. Goodman? Gary? Oh, whose, whose
22 Gary, who is Gary?

23 A We have three Goodmans working for us.

24 Q This particular Goodman? Oh, I'm sorry.

25 A And it is really tough with the top so redacted, it just -

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1 -

2 Q Sure, I understand. But going to 126 then, this is an
3 incident that took place, was written up on December 3rd of
4 2012, correct?

5 A Yes.

6 Q You were the witness, right? Alan Frey?

7 A Yes.

8 Q And it says here that he was retrained?

9 A May I read this, please?

10 Q Yes.

11 A You know, I gotta tell you, it's hard for me with the
12 whole name redacted to tell you who the client was.

13 Q Well, without having to mention who the client was --

14 A Well, I'm just saying --

15 Q Yeah. So my simple question would be Gary Goodman.

16 A We have three Goodmans.

17 Q I know. Well, Jerry Goodman, you already answered to
18 Jerry, No. 125.

19 A But it could be -- she may well have put Gary instead of
20 Jerry --

21 Q Oh, you think so?

22 A I don't know. Again, I didn't write either of them.

23 Q Alright.

24 A So I would have to research it to give you a definitive
25 answer on that.

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1 Q Let me ask you this, if you know the answer, is there a
2 Gary and is there a Jerry?

3 A I don't -- I know there is three Goodmans, I know one is
4 Gary, I know is Andrew --

5 Q Right.

6 A -- I don't know what the third one is. I'm sorry that
7 doesn't help you, but I'm --

8 Q Well, no, was Mr. Goodman, this Mr. Goodman, when there
9 was Jerry or Gary, was not fired for this incident, correct?

10 A I don't believe so.

11 Q Okay.

12 A I can't answer that definitively.

13 MR. FIOL: If I haven't, I move for the introduction of
14 General Counsel No. 126.

15 JUDGE POLLACK: And 126 is received.

16 **(General Counsel's Exhibit 126, received into evidence)**

17 Q And if you look at General Counsel 127.

18 A Yes.

19 Q Is that Cathy Komer, correct?

20 A Yes, it is.

21 Q Kommer? And Ms. Kommer was not fired for this incident,
22 correct?

23 A That's correct, she's still working for us.

24 MR. FIOL: I move for the introduction of General Counsel
25 127.

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1 MR. LOFLAND: Don't see relevancy.

2 JUDGE POLLACK: Well, it's an incident involving an injury
3 where the employee was not discharged. I guess that's the
4 argument. I'll receive it.

5 **(General Counsel's Exhibit 127, received into evidence)**

6 Q And then with, the last of these, will you look at No.
7 128?

8 A I see.

9 Q Rita Dela Cruz?

10 A Yes.

11 Q She still working?

12 A I believe so. I'm not positive of her, I'm sorry. We
13 have a lot of folks.

14 Q Mighty nice, a lot of employees. Document that's prepared
15 in the normal course of business?

16 A Incident Report, yes.

17 Q Okay.

18 MR. FIOL: I'm going to also move for the introduction of
19 General Counsel's 128.

20 MR. JENSEN: 128, you said?

21 MR. FIOL: Yes.

22 JUDGE POLLACK: Okay. The ruling is the same. It will be
23 received.

24 **(General Counsel's Exhibit 128, received into evidence)**

25 Q If you look at General Counsel's 129.

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1 MR. FIOL: What's the schedule? You want to have another
2 witness?

3 JUDGE POLLACK: If you have another witness.

4 MR. FIOL: I have someone I could call now, but I would
5 just be, you know, might be, 5-to-10 minutes, he's got to
6 locate a few things and then, hold on, what time do you want to
7 go to?

8 JUDGE POLLACK: Till 5 o'clock.

9 MR. FIOL: Five?

10 *[Long pause]*

11 JUDGE POLLACK: Off the record, please.

12 *[Off the record]*

13 **Whereupon,**

14 **TIMOTHY THARP**

15 **having been duly sworn, was called as a witness herein, and was**
16 **examined and testified as follows:**

17 JUDGE POLLACK: Please be seated. Please give us your
18 name and address for the record.

19 THE WITNESS: My name is Timothy Tharp, T-h-a-r-p as in
20 Paul. Address is 1212 Jefferson Street Southeast, Suite 300,
21 Olympia, Washington 98501.

22 **DIRECT EXAMINATION**

23 Q BY MR. FIOL: Good afternoon, Mr. Tharp. Are you
24 currently employed?

25 A Yes.

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1 Q And who are you employed with?

2 A I am employed by the Washington Federation of State
3 Employees AFSCME, Council 28.

4 Q The Union in this case?

5 A Correct. Yes, correct.

6 Q What's your position?

7 A My position is Journey Organizer.

8 Q What do you do, what are your duties -- strike that. What
9 are your duties as a Journey Organizer?

10 A My principle duties as a Journey Organizer is to identify
11 and assist unrepresented workers either in the public or
12 private sector to join our Union or gain representation through
13 either an NLRB election, a recognition campaign or if state
14 workers, through the proceedings which is the Public Employees
15 Relations Commission. Basically, they gain representation for
16 the purposes of collective bargaining.

17 Q Did there come a time when you became involved with the
18 employees who work for KTSS of Respondent?

19 A Yes.

20 Q When did that start, can you tell us?

21 A When I became involved?

22 Q Yes.

23 A I became involved at the end of August, 2011.

24 Q How did you become involved?

25 A A co-worker of mine, a fellow organizer, named Elizabeth

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1 Turbow and Brandon Anderson had already met with a small group
2 of employees in I believe August or late July and this group of
3 employees had expressed interest in forming a union and joining
4 our Union and I was assigned to follow-up with this group to
5 see if it was legitimate campaign in terms of were they
6 serious, you know, what were the issues. Basically, I was
7 assigned to work on this campaign with this group to see
8 whether we could move forward or not.

9 Q Did there come a time when you did move forward?

10 A Yes.

11 Q And when was that?

12 A So beginning, I believe, end of August, early September of
13 2011, I started meeting with a small group of workers who were
14 supportive of the idea of forming a union and were actively
15 working to make that a reality. We met on average once every
16 other week up to once a week. Well, I tried to stay in contact
17 with them weekly up until we filed for an election in December
18 of 2011.

19 Q Can you identify for the Court a few of these, the people
20 that you were in constant contact with?

21 A Yeah, these people included Johnnie Driskell, Lenora
22 Gates, or excuse me, Lenora Jones, I apologize, so Lenora
23 Jones, Jessica Lanzoratta and I can spell any of these if you
24 need me to, but -- would you like for me to spell them? Okay.
25 Starting with Johnnie Driskell, I believe it is J-o-h-n-n --

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1 understanding the Company and after these three months, we felt
2 that these workers were serious enough and felt strongly enough
3 about the care for their clients and other issues that were
4 motivating them, that we decided to move forward with what we
5 call a blitz, an organizing blitz.

6 Q What's, can you tell the Court what an organizing blitz
7 is?

8 A Yeah, this is a very common organizing, union organizing
9 technique that's utilized. Basically, there are various phases
10 of a union organizing campaign. The initial phase is what we
11 refer to as a secret or underground phase, where we would like
12 to have it all level as possible, not have management find out
13 about our organizing efforts. We would like to just have the
14 pro-union employees know about it, talk about it secretly, but
15 there will come a point when we believe it, the majority of the
16 people would support it that were gonna go public and our
17 public phase includes things like massive outreach and so a
18 blitz is the first part of that, in which myself, Union staff,
19 and the organizing committee, which includes pro-Union workers
20 and activist leaders spend, in this case, a weekend, doing
21 massive outreach to their fellow co-workers. This could
22 include phone calls, but primarily includes going to a public
23 place where they, house, to meet with them off work, times and
24 locations, so we can have an honest conversation about their
25 working situation and whether or not they think it is a good

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1 idea to form a union and if they do, in fact, support the idea
2 of forming a union once they understand the basics, we would
3 ask them to then sign the union authorization cards so we could
4 get the sufficient number of cards to file for an NLRB
5 supervised election.

6 Q Did there come a time when the Union did this blitz?

7 A Yes.

8 Q When?

9 A The first weekend of December of 2011.

10 Q What did you do?

11 A So beginning on Friday evening, basically, we were told by
12 workers that -- Oh, I'm sorry.

13 Q I'm sorry, Friday evening, is there a date attached to
14 that?

15 A I believe that would be, without looking at a calendar --

16 Q And what year?

17 A -- second or, yes, of December, either second or third,
18 the Friday of 2011.

19 Q Okay.

20 A So without looking at a calendar, I couldn't be sure, but
21 whatever that first Friday was of December, 2011.

22 Q No problem. Okay.

23 A Anyway, so we had planned for this. We had kind of, you
24 know, prepared the organizing committee for what they would be
25 responsible for doing. We brought in a lot of other Union

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1 staff and organizers to help. We then teamed up with KTSS
2 Union organizing committee employees, such as Johnnie Driskell,
3 Lenora Jones, Jessica Lanzoratta, to then go out to their co-
4 workers houses, beginning at, what we believed was the time in
5 which management would go home for the weekend, so we started
6 about 4:35, you know, pretty much right after we thought
7 management would go home on a Friday, which is roughly 4 or
8 4:30, we began doing this massive outreach, beginning on that
9 Friday afternoon, continuing on through that Sunday evening.

10 Q And to your knowledge, do you recall approximately how
11 many employees you were able to reach?

12 A I don't recall the exact number. I know it was, you know,
13 well over 40-to-50 employees, at least, at least. And the vast
14 majority signed union cards.

15 Q I'd like to direct your attention to Sunday of that
16 weekend, could be the, December 4.

17 A Sure.

18 Q Do you recall the actions that your Union engaged in that
19 particular day as part of this campaign?

20 A Yes. Another common organizing tactic that I usually use
21 and other organizers do is, you know, once you've done a
22 massive outreach with individual workers in the privacy of
23 their own home, it is a good idea to bring them together as a
24 group, so they can kind of decide as a group, you know, are we
25 ready to move forward, does this make sense, you know, what are

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1 we really looking to do here and kind of as another way to
2 really, you know, make sure they are serious and want to move
3 forward, so we had a meeting, we were telling people when we
4 were going out to their houses and signing them up that there
5 was going to be a meeting for workers at the Fairfield Inn and
6 Suites, which is a hotel in downtown Bremerton on Sunday
7 evening at about 7 p.m.'ish. Or actually, I think, a little
8 after 7 p.m. because many workers got off at 7 from their
9 weekend shift, so, we said, you know, 7, 7:30, so people would
10 have time to come there if they were working that weekend and
11 the idea of that meeting was to, again, educate them about the
12 process, go over their concerns that they wanted to see
13 improve, how those concerns could or could not be addressed
14 potentially through collective bargaining, answering any
15 questions or concerns they might have and just really
16 determining if that group, you know, being in control of this
17 process, wanted to move forward.

18 Q What's your experience been in the start of a campaign,
19 what have employers done in your experience when you start,
20 getting to this point?

21 MR. LOFLAND: Objection. Lack of proper foundation.

22 JUDGE POLLACK: Sustained.

23 MR. FIOL: It's through his experience, what, what have
24 employers done.

25 JUDGE POLLACK: What other employers have done is

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1 irrelevant.

2 Q Let me go on from there. After this weekend, okay, can
3 you tell the Court what happened next with your campaign?

4 A You mean after the meeting on Sunday night?

5 Q Uh-huh.

6 A In terms, I'm sorry, can you just rephrase the question,
7 what happened next in terms of --

8 Q Right, in terms of your campaign.

9 A Well, so in terms of the campaign, one of the things we
10 had prepared the workers for, especially during the organizing
11 committee drive, but especially at that Sunday night meeting
12 is, in all the conversations we have, we do what we call is
13 inoculation and that is a way to basically prepare them for
14 what they may or may not expect during the campaign. These
15 things include what are called captive audience meetings, which
16 is where management will hold either a mandatory or non-
17 mandatory meeting at their office where either they,
18 themselves, or consultants will come in and basically through
19 various means, try to discourage or dissuade people from
20 supporting and or moving forward with an organizing campaign.
21 We told them about potential e-mails, memos, being spoken to by
22 their Employer, you know, directly one-on-one. We said that
23 sometimes people are fired during organizing campaigns and that
24 was the Sunday night meeting, you know, we talked about that,
25 we talked about that before though and that following day, that

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1 Monday, because we had expected that management would get wind
2 of it, a union supporter, because basically people that I
3 tasked to be on the union organizing committee, they are my
4 eyes and ears and were supposed to respond to me so we could
5 access, you know, is management doing anything to respond to
6 the organizing efforts, how they found out essentially and on
7 Monday, I believe it was maybe Johnnie Driskell, one of the
8 workers called me from the organizing committee and said hey,
9 you know, I went in to the office to drop off some paperwork or
10 whatever and I saw management huddled with somebody I didn't
11 recognize and so that got me thinking, oh shoot, you know,
12 what's coming next, so I, so then the next day they got wind
13 that there was going to be, I believe, the following Tuesday,
14 the next day, they were told, I don't know if it was via memo
15 or just told, I think they were called up by people from the
16 office --

17 MR. LOFLAND: I'm going to object as lack of personal
18 knowledge, no set proper foundation.

19 Q What's your personal knowledge?

20 A I was told this by the organizing committee members.

21 MR. LOFLAND: And to which I object as hearsay.

22 Q And what were they instructed to do?

23 MR. LOFLAND: Your Honor, I've, I'm sorry, but I've got an
24 objection.

25 JUDGE POLLACK: Yes, and I'm about to sustain it.

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1 Q What did you do next?

2 A Basically I spoke with several committee members. I
3 became aware of a mandatory meeting about the Union that was to
4 take place on Wednesday, December 7th, so I had spoken with some
5 of the employees to tell them, you know, here is what you can
6 expect, here's different questions you might want to ask or
7 ways to deal with this. So then that meeting did, in fact,
8 take place the next day, was the 7th --

9 Q Which meeting are you referring to?

10 A There was a meeting in which KTSS employees, including
11 people from the Home Care Division, were gathered in small
12 groups at the Employer's offices to basically hear from a, what
13 I would call a union consultant, but I believe it was from the
14 Labor Relations Institute, advised them about, you know, why
15 unionizing is not a good thing.

16 Q What did you do?

17 A Well in order to help make sure that this didn't confuse
18 or discourage people or honestly, scare them, I had set up a
19 meeting directly after those meetings at KTSS offices, I
20 scheduled a union organizing meeting at about 4^{'ish}, 4:30 that
21 afternoon, that Wednesday, December 7th, so we could kind of go
22 over any questions that were brought up, see how people were
23 feeling, see if people were shaken, concerned, consensus of,
24 you know, were people freaking out, was it fine, so, so I held
25 a meeting at the Fairfield Inn and Suites that, was December 7th

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1 in the afternoon.

2 Q Do you recall what happened? How long was the meeting?

3 A The official meeting probably itself was about an hour. I
4 stayed after for, you know, probably another 15, 20 minutes,
5 speaking to some other employees, but probably the actual, kind
6 of official part of the meeting was probably about an hour.

7 Q And do you recall what happened at that meeting?

8 A Yes, I do. So that meeting, some of the main, typical
9 union organizing committee members showed up. This included,
10 you know, Johnnie Driskell, Lenora Jones and another employee
11 named Bonnie Minor, who had also previously attended the
12 Sunday, December 4th meeting at the union organizing meeting at
13 the Fairfield Inn and Suites that evening. She showed up along
14 with her sister, Barbara Mitchell and as the meeting was kind
15 of assembling, she received a phone call and excused herself to
16 take the phone call. She then returned to the room about,
17 several minutes later, in tears and said --

18 MR. LOFLAND: Objection. Hearsay.

19 MR. FIOL: This is, she was in tears, that's not a
20 statement, that's what you observed, right?

21 MR. LOFLAND: He was, he was going to say, "And she said,"
22 to which I object to as hearsay.

23 MR. FIOL: Well, excuse me, he's testified, Your Honor, he
24 testified that she got a call, went out, came back in tears.
25 There is no hearsay at that point.

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1 JUDGE POLLACK: That's right, but he was about to testify
2 to which he said, "And she said," that's where we get the
3 hearsay.

4 MR. FIOL: Okay. So continue, is the objection now before
5 he even testified as to what she was about to say?

6 JUDGE POLLACK: Yes, he cannot --

7 MR. FIOL: Okay.

8 JUDGE POLLACK: -- testify to what she said.

9 MR. FIOL: Let me ask you this, and Your Honor, this is
10 not being put in for the truth, for the proof of matter
11 asserted, it is the state of mind, what did he do next after
12 what she said. I believe that is a clear exception to hearsay.

13 JUDGE POLLACK: Just have him testify --

14 MR. FIOL: Well, right, right, he never had a chance is
15 why I wanted to, before he, you know, he was cut off, so if you
16 can, the question was, what happened next and you were talking
17 about Bonnie Minor.

18 JUDGE POLLACK: Go ahead.

19 A Okay. So she returned to the room. She then said --

20 MR. LOFLAND: Objection.

21 JUDGE POLLACK: Okay. I don't want to hear what she said.

22 THE WITNESS: Okay.

23 JUDGE POLLACK: She reported something to you, right?

24 THE WITNESS: Yes, she, to myself and everyone else in the
25 room.

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1 JUDGE POLLACK: Okay. Then what happened?

2 THE WITNESS: This matter that she spoke of, was of great
3 concern to myself and to the fellow, her fellow employees
4 there.

5 MR. LOFLAND: Objection. Lack of proper foundation as to
6 what was concern to other people

7 JUDGE POLLACK: Alright. Go ahead.

8 A Where am I at now?

9 Q Just, you were, there was a concern.

10 A Uh-huh.

11 Q Okay. So what did you do?

12 A I spoke with Bonnie Minor directly with the group about
13 the concern that she had raised, but my main objective during
14 that meeting was not to allow that concern to derail the
15 organizing efforts, as I was concerned it might, because in my
16 opinion, it is something that I would be afraid of, so that
17 being said, I told her I will speak with you more about this
18 and what your options are to deal with this problem after the
19 meeting, just me, you and your sister. So I then refocused the
20 organizing meeting back to its original agenda pre this
21 reported incident.

22 Q And what was that agenda?

23 A Well the agenda was, it was multi, it had, you know,
24 multi-folded, or I guess, multiple points. Primarily it was to
25 assess, you know, people's feelings or responses post the, what

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1 I would refer to as a captive audience meeting, and in doing
2 that, it's to see what did the person leading this meeting say,
3 if anything, that allowed them to be either worried or is this
4 true, is this not true, so any questions they had as a result
5 of this meeting, I wanted to answer them. I also wanted to
6 say, you know, these are things we had discussed before, was
7 there anything that I had mentioned to you before that you
8 would hear that you didn't or vice versa, was there anything
9 new that I had not prepared you to expect from management in
10 terms of what they would say and arguments they would give to
11 discourage you from the Union. I then said, you know, the real
12 purpose of this, we can talk infinitum about what they are
13 going to say and what they're going to do, but really, our
14 focus is to continue to build support amongst our co-workers to
15 address the issues and concerns of why we want to form a union,
16 which include the best interests of the clients, the quality of
17 care, those were the main reasons why people wanted the union
18 and so I refocused back on to that and then gave people
19 assignments as they were the activists of the union to help
20 advance that which included reaching out to their co-workers,
21 continuing to, we were still in a phase of gathering more union
22 authorization cards, so we could file for an election, because
23 we wanted an overwhelming majority of support before we would
24 file an election.

25 Q Did you have another meeting after that on or about

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1 December 11th?

2 MR. LOFLAND: Well, I'm gonna object. That's leading.

3 MR. FIOL: Well, it's a transition --

4 MR. LOFLAND: No, it's not.

5 JUDGE POLLACK: Go, go ahead.

6 Q Did you hear the question?

7 A Yes.

8 Q So what say you?

9 A Well, I believe, December 11th was the Sunday following the
10 December 4th meeting, which was the initial kind of group
11 meeting we had and what we, the purpose of that was, again, we
12 wanted to continue to grow the public support of this
13 organizing effort, which meant we wanted to get more and more
14 groups of people together in a room, talking about the issues,
15 kind of seeing the room grow and so we had put out the word
16 again via the organizing committee through contacting people
17 via phone, through our house visit program where we'd go out
18 and visit the houses, the meeting at, again, at the Fairfield
19 Inn and Suites, that December. Or excuse me, that Sunday.
20 Again, at the same time roughly, at 7'ish. To again --

21 Q Do you -- oh --

22 A Oh sorry, to again --

23 Q -- go ahead, I'm sorry.

24 A -- basically to, just again, the purpose of that meeting
25 was to again explain the organizing process, talk about the

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1 information with the group. Terry was very animated about
2 this, saying, oh, that's, you know, because one of the issues
3 that people were talking about was wages and so he spoke up
4 and said, "Wow, that's crazy," you know --

5 MR. LOFLAND: Objection. Hearsay.

6 JUDGE POLLACK: It's not being offered for the truth of
7 the matter asserted. Go ahead.

8 A So as a result of some of that financial information that
9 we shared with the group, Terry mentioned, hey, I'm gonna be,
10 I'm gonna talk to Alan Frey about this and does anyone have any
11 questions they want me to ask him because I'm gonna get the,
12 I'm gonna ask him these questions, I'm gonna meet with him, I
13 think the next day or shortly thereafter, and I'm gonna make a
14 list of questions and I'm gonna ask him these questions and
15 then I'm going to write down his answers, his responses and
16 share them with everybody, so he asked the people if they had
17 any specific questions they wanted him to ask about.

18 Q Do you recall anything else that happened at this meeting?

19 A This meeting was an opportunity that we utilized to take
20 photographs of supportive union employees. We took some group
21 photographs of people kind of standing together. I also asked
22 people to, if I could take individual head shots and basically
23 --

24 Q What did you do that for? Oh, I'm sorry. I'm sorry, I
25 apologize. Continue.

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1 A Sure. The reason we were asking for these photos, as I
2 explained to the committee is, it is important to be public in
3 your support of the Union for a variety of reasons, one of
4 which is to, you know, hopefully lessen, basically give you
5 more protection under the eyes of the law that management might
6 know that you're supportive of the Union, so we took these
7 photos in development with the organizing committee, as a way
8 of presenting that in a literature piece, a piece of literature
9 to be given to all of their co-workers, basically with their
10 photos arranged that --

11 Q Go ahead.

12 A Sorry. With their individual head shots arranged around
13 the piece of literature as a border, so it would be, you know,
14 so and so's picture, so and so's picture, as a literal border
15 around a letter which was drafted by myself and another Union
16 staff person and the organizing committee themselves and this
17 letter was an open letter addressed to their co-workers,
18 basically which said, you know, we support the Union, we are
19 coming together to address certain issues, these are why we
20 want to form a union, we're asking, we are your organizing
21 committee, we are asking you to join us. And then they all, it
22 wasn't their signatures, but then their names were listed on
23 the piece of literature.

24 Q Okay. What did you do with it?

25 A Well, so we gathered these photos at that Sunday night

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1 meeting. We had gathered a couple of others in that week
2 prior, so we were trying to get this piece together to go out
3 the following week as a piece, that was mailed to all of the
4 employees that we had addresses for and given to the organizing
5 committee to distribute to their co-workers, so that piece was
6 finalized and edited and I, and mailed on, I think that
7 Wednesday, December 14th, it was mailed out to all KTSS
8 employees that we had addresses for.

9 Q When was the election?

10 A You mean when was the vote count?

11 Q The vote, the Union, I'm sorry, when was the vote count?

12 A The actual counting and tallying of ballots was in this
13 room, I believe March 15th, 2012.

14 Q Okay. Can you tell us -- were you present?

15 A I was.

16 Q Can you tell us who was present that day?

17 A For the Union, myself, my organizing director, Megan Park,
18 several other organizers, staff organizers, such as Nicki Diaz,
19 Brandon Anderson, Vanessa Arpin, Elizabeth Turnbow. There were
20 also several KTSS current and former, at this point, employees
21 there, including Bonnie Minor, Barbara Mitchell, Jack Hopkins,
22 Terry Owens. I can't remember if anyone else. And then in
23 terms of for KTSS, it was, I believe, Gary Lofland, Counsel for
24 the Respondent, as well as Alan Frey, who is here today, and
25 Kathy Grice.

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1 Q So what happened at this Union campaign -- this election
2 count?

3 A This tally of ballots, the ballots were tallied, there was
4 a number that were challenged, but ultimately the number of
5 challenged ballots was not determinative, so the Union won the
6 election.

7 Q So what do you recall happening after the count that day?

8 A Well once all the necessary paperwork was, you know,
9 signed off on in terms of the tally of ballots and everything,
10 the group of, both the Union staff and Union employees and the
11 KTSS workers, we left this room and went down the hall about 15
12 feet, right in front of the NLRB doors there, into the main
13 entrance where that receptionist is and we wanted to take a
14 group photo to share with employees and with our fellow Union
15 brothers and sisters in our Union about the victory as we were
16 excited about it, so we lined up and took photos and loudly
17 cheered, "What time is it? Union time. What do we want?
18 Contracts." Basic Union chants, they would kind of be like,
19 "Hurrah," arms in the air and taking group photos.

20 Q Where did that take place?

21 A Right in, directly, going out of this room, about 10 or 15
22 feet to your right, directly there in front of, like where the
23 elevators are, we were standing right in front of the door of
24 the NLRB offices.

25 Q I see. Do you know, do you have knowledge, is this, would

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1 this door, right here in front of us --

2 A Yes.

3 Q -- that I'm pointing to, was that open?

4 A Yes, it was.

5 Q And can you, this was, how many of you were making these
6 statements?

7 A There was a group of us, probably about ten, pretty loud,
8 pretty loud.

9 Q Okay. And to your knowledge, was it heard by -- strike
10 that. Where were the people from KTSS when that happened?

11 A When we left, they stayed in this room.

12 Q Okay. And how long --

13 MR. JENSEN: Are you referring to KTSS management?

14 MR. FIOL: Management, I'm sorry, yes.

15 Q The people that you mentioned --

16 A Correct, to my knowledge, when we left this room, Alan
17 Frey, Gary Lofland and Kathy Grice, I believe, all stayed in
18 the room.

19 Q And how long did you people stay out there by the elector
20 chanting?

21 A Start to finish, no more than five minutes.

22 Q Now, you've been here since the beginning of this hearing,
23 correct?

24 A Yes.

25 Q You were here when we started and we went through the

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1 Complaint and there was some changes that had to be made to the
2 complaint, correct?

3 A Today, yes.

4 Q And we had in there that Lisa Hennings was, received a
5 letter of warning, you are aware of it, correct?

6 A Yes.

7 Q Okay. And that was March 16th, correct?

8 A Yes.

9 Q How did, did you get, did there come a time when you found
10 out about this letter of warning?

11 A Yes.

12 Q How?

13 A Lisa Hennings contacted me.

14 Q Do you recall approximately when she contacted you?

15 A It would have been shortly thereafter. I'm trying to, I
16 can't say for, with certainty, but I know it was within several
17 weeks of getting that, whenever she received it, and then
18 shortly thereafter she contacted me via phone.

19 Q Outside of Lisa Hennings, did anyone else contact you
20 about the discipline that was issued to her?

21 A No.

22 Q Did you, were you notified by KTSS that they were going to
23 discipline her?

24 A No, I was not.

25 Q Now you were also here when we corrected the Complaint, we

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1 took out March 18th and substituted the date April 12th of 2012
2 with respect to Lisa Hennings.

3 A Yes.

4 Q Do you recall that?

5 A Yes.

6 Q Okay. Now, with regard to that, did there come a time
7 when you learned that Lisa Hennings had been written up on
8 April 12th of 2012?

9 A Yes.

10 Q Can you tell the Court how you learned about that?

11 A Again, I learned via Lisa Hennings, this time it might,
12 she might have, I'm trying to remember if this one, she told me
13 via phone, but we met in person shortly thereafter, so she
14 might have told me about that one in person, but she told me
15 either via phone or in person, I forget which.

16 Q Besides Lisa Hennings, did anyone else notify you that she
17 was being disciplined?

18 A No.

19 Q On April 12th?

20 A No.

21 Q Did KTSS notify you?

22 A No.

23 Q I'll move on to -- you probably don't have it in front of
24 you, so it's General Counsel's Exhibit 129. I'll show it to
25 you.

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BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 19

In the Matter of:

KITSAP TENANT SUPPORT SERVICES,
INC.,

Employer,

and

WASHINGTON FEDERATION OF STATE
EMPLOYEES, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL 28, AFL-CIO,

Petitioner.

Cases: 19-CA-74715
19-CA-79006
19-CA-82869
19-CA-86006
19-CA-88935
19-CA-88938
19-CA-90108
19-CA-96118
19-CA-99659

The above-entitled matter came on for further hearing pursuant to adjournment, before, **Administrative Law Judge, Jay Pollack** at the National Labor Relations Board, Jackson Federal Building, 915 Second Avenue, Seattle, Washington 98174 on Wednesday, May 29th, 2013 at 9:20 a.m.

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1 Tharp?

2 MR. FIOL: Yes.

3 MR. JENSEN: May I see it, please?

4 MR. FIOL: Yes.

5 MR. JENSEN: Attached is the appendices?

6 MR. FIOL: Yeah, it's --

7 JUDGE POLLACK: Do you have a copy for Mr. Lofland?

8 MR. FIOL: Yes. I have a ten page document, dated August
9 9 of 2012 and there are exhibits attached to it up unto Exhibit
10 B, so I want to show Mr. Jensen and Mr. Lofland.

11 JUDGE POLLACK: Off the record, please.

12 *[Off the record]*

13 JUDGE POLLACK: Mr. Jensen?

14 MR. JENSEN: Thank you.

15 **DIRECT EXAMINATION**

16 Q BY MR. JENSEN: Mr. Tharp, I have a few questions for you.
17 By the way, does your Union represent unions in the private
18 sector?

19 A You mean workers in the private sector?

20 Q Yeah.

21 A Yeah.

22 Q Yeah. Now I want to direct your attention to the
23 situation KTTS [sic], did you attend on behalf of the Union
24 some of the bargaining sessions?

25 A Yes, I did.

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1 Q Okay. Do you recall when the first session occurred?

2 A The first session was July 13th, I believe.

3 Q Okay. And the certification was in March, correct?

4 A Correct.

5 Q Was July 13 the first date the Union had requested to
6 bargain?

7 A No, we had offered quite a few dates for June and possibly
8 even for the end of May, I forget, but July was the first one
9 that actually happened. There was a date, I think the 5th of
10 June that had been agreed upon, but then the Employer cancelled
11 that date.

12 Q And then after that was cancelled, how did it come to
13 pass, if you know, that the meeting occurred then on July 13?

14 A Sarah Clifthorne, who is the Lead Negotiator for our
15 Union, offered several other dates in June, specifically, but
16 July 13th was the first date they agreed to.

17 Q Did you have, on behalf of the Union, did you have a
18 bargaining committee?

19 A Yes, we had a bargaining team.

20 Q Okay. And were employees of KTSS on that bargaining team?

21 A Yes, there were five KTSS employees on the bargaining
22 team.

23 Q Could you name them for us?

24 A Yes, I could. Johnnie Driskell, Lisa Hennings, H-e-n-n-i-
25 n-g-s --

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- 1 Q Alright. And let me interrupt you one second. I notice
2 some of the documents that Lisa Hennings-Lucas, is that the
3 same person?
- 4 A Yes, it is.
- 5 Q Okay. So I've got Driskell and Hennings and who else?
- 6 A Al, I'm going to have to spell his last name, it is
7 Quattrocchi, Q-u-a-t-t-r-o-c-c-h-i.
- 8 Q Okay. Al?
- 9 A Al Quattrocchi, yes.
- 10 Q Okay.
- 11 A And then Gary Martell, M-a-r-t-e-l-l.
- 12 Q Okay.
- 13 A And Ashley Klocke, K-l-o-c-k-e.
- 14 Q Okay. Martell, Klocke, Al, Henning and Driskell, is that
15 correct?
- 16 A Yeah, Driskell, Henning, Klocke, Quattrocchi and who did
17 we miss? Martell.
- 18 Q Okay. Does Martell still work there at KTSS?
- 19 A No, he does not.
- 20 Q What happened to him?
- 21 A His employment was terminated.
- 22 Q By the Company or by himself?
- 23 A By the Company.
- 24 Q Hennings, is Hennings still employed?
- 25 A She is still employed.

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1 Q Okay. And since the, since she started serving on the
2 bargaining committee, has, does she have the same position she
3 used to hold?

4 A No, she does not. She was demoted from her Head of
5 Household position to a Direct Service Staff position.

6 Q Do you know when that was?

7 A Yeah, it would have been, I mean, after bargaining began,
8 so probably last fall. Actually no, not even that long ago.
9 It was probably this year.

10 Q And Martell, do you know when he was terminated?

11 A That was last, end of last summer.

12 Q Okay. And Driskell, does she still work there?

13 A No, she does not.

14 Q And what happened with her?

15 A She was terminated.

16 Q By the Company or her own choice?

17 A By the Company.

18 Q Okay. And do you know when that was?

19 A The letter that she received was dated September 1st, but
20 she had been placed on administrative leave before that.

21 Q September 1st of which year?

22 A Of 2012.

23 Q Okay.

24 A And actually, so, Gary, sorry, so had Gary Martell, had
25 been placed on administrative leave before he was terminated by

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1 the Company.

2 Q Paid?

3 A Unpaid, both.

4 Q Okay. And Klocke, Klocke still work there?

5 A Yes, she does.

6 Q And that's Ashley Klocke?

7 A Yeah, she was laid off for, I think the letter said for
8 due to, she was pregnant, so she was laid off and, but we'd
9 originally filed the ULP, but then we took it to the EEOC and
10 so now she's back working, I believe.

11 Q You testified yesterday about the, at the beginning of
12 your blitz campaign, et cetera, et cetera, and I think you
13 testified, I understood you to say that some of the KTSS
14 employees went to other employees' homes, et cetera to
15 organize. Did I understand that correct?

16 A Yes, that's correct.

17 Q Okay. Does the bargaining unit here, is approximately
18 what size?

19 A The bargaining unit as certified in the NLRB, you know,
20 whatever, petition and thing, roughly, its grown since we were
21 certified, now it is about 125, 130 folks total. That's in
22 Bremerton, Port Townsend, Port Angeles.

23 Q Okay.

24 A Spread throughout the kind of greater Olympia Peninsula.

25 Q Okay. And those employees in your bargaining unit, do

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1 they have a place where they regularly come to report to work
2 in the morning, like a factory or something like that?

3 A As, I think Alan Frey mentioned in his testimony, the way
4 they do it is they work out of the clients' homes, whether they
5 are rented or not. KTSS has a headquarters in Bremerton. They
6 also have kind of a field office up in Port Angeles, but
7 normally staff do not report there, they report directly to the
8 client's home where they do their shift, although as he
9 alluded, Mr. Frey alluded to, you know, there are meetings and
10 such held at the office that, you know, for paperwork, et
11 cetera, that staff might come in to, but their actual place of
12 employment where they do their shifts is at the client's
13 residence, which is in the community.

14 Q So on a daily basis, they are not reporting to a central
15 location, is that what I understand?

16 A No.

17 Q Okay. You also referenced yesterday that you got the
18 campaign underway. You took some pictures and put them on
19 flyers? Pictures of KTSS employees, correct?

20 A Yes, that's correct.

21 Q And is that your organizing committee?

22 A Yeah, that was people that either stood up and said, yeah,
23 I'm willing to have my photo taken and then had participated in
24 the organizing efforts.

25 Q And then, and did it also have the names of the employees

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1 on those, on those, with their pictures?

2 A Yes, it did.

3 Q And what did you do with, if anything, with those flyers
4 and when?

5 A We, again, collected the photos and the letter that
6 accompanied it and that was run through the organizing
7 committee of workers. They all okayed their photos on it and
8 okayed the letter. I think as I mentioned yesterday, my
9 testimony, the letter was just basic, you know, why we're
10 organizing. We then finalized it about December 14th of 2011,
11 it was then mailed to all of the employees that we had a
12 mailing address for and a physical address. It was also
13 printed and copies were given to people at meetings, as well as
14 to the organizing committee to distribute as well.

15 Q And approximately employees home addresses did you have?

16 A At that time, well at that specific time, we were also in
17 the midst of trying to organize the Community Protection
18 portion of the program, which is another, probably roughly 40,
19 50 people, so, you know, adding all that, because it was also
20 mailed to the Community Protection people who ultimately were
21 not in the bargaining unit, it was over a hundred.

22 Q Okay. And just for the record here, because I'm not sure
23 that that has come up before, the Community Protection, is that
24 another segment of the workforce that you sought in your, in
25 your Petition for Representation?

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1 A Yes.

2 Q Was it, was that the first meeting or did you have an
3 earlier meeting on December 4?

4 A There was a meeting on December 4, as well.

5 Q The December 4 meeting was at the Fairfield Inn?

6 A They both were.

7 Q Okay.

8 A The December 4th meeting was a Sunday evening.

9 Q Okay.

10 A That was the culminating meeting of the weekend of the
11 blitz.

12 Q How was that meeting advertised?

13 A Specifically, when we went to worker's houses, we told
14 them about it. At that point, we still had not put anything on
15 paper. We did not want to put anything on paper, assuming that
16 it immediately gets back to management, that's been my
17 experience, so it was just word of mouth and we had the
18 organizing committee just call people and say hey, you know,
19 please attend.

20 Q And how many, how many people attended that meeting that
21 night?

22 A I would, it was probably about 25, 20-to-25.

23 Q Okay. And then at that meeting, was there any
24 introduction of anybody as being on the organizing committee or
25 bargaining committee or anything like that?

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1 A No, the bargaining committee was not formed at that point.
2 There were the activists and leaders from the organizing
3 committee present and they basically helped facilitate the
4 meeting in some ways. It wasn't like a formal, I'm so and so,
5 I'm the organizing committee. At least the December 4th, but
6 they, they helped facilitate the meeting. I kind of talked to
7 some of them about, ahead of time to kind of lay out what the
8 agenda for the meeting would look like and so they could help
9 kind of participate.

10 Q Did any employees in particular, KTSS employees in
11 particular, take an active role in that meeting, speaking up?

12 A Yeah, for sure. One of the ones that I was happy stood
13 out, because I hadn't actually spoken with her before that
14 meeting, was Bonnie Minor, and her sister, Barbara Mitchell.
15 Bonnie Minor, I believe, previously worked at a union company
16 called Communitos (phonetic) which does similar work that KTSS
17 and she spoke up in the meeting, very positively about her
18 union experience and what being in a union meant, so that was,
19 that was nice, because I didn't know and or expect that, so,
20 you never know when people walk in a room how they are going to
21 feel, so she spoke up. Johnnie Driskell, as well, was very
22 vocal. Leonora Jones was in attendance, she was, took a
23 leadership role as well.

24 Q Your next meeting was on the 7th as I recall?

25 A Yeah, that was, that wasn't so much a bigger meeting, that

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1 was kind of the core organizing committee meeting.

2 Q And how many people were there?

3 A Probably about seven-to-ten.

4 Q Okay. And how was that meeting noticed or advertised?

5 A That one was just targeted invites. I just told a certain
6 key, kind of folks that had stepped up, either prior that were
7 on the organizing campaign, because ideally, I wanted to grow
8 the organizing committee as much as possible, so I was trying
9 to identify people that I thought, based on over the weekend,
10 seemed supportive and could be leaders, I invited them as well,
11 but it was a small selected group of people that I invited. It
12 wasn't like a broad general invite.

13 Q Do you remember who was there?

14 A Yeah, Bonnie Minor, her sister Barbara Mitchell, Johnnie
15 Driskell, Lenora Jones, Jack Hopkins, Caitlin Steel, those are
16 the ones I recall off the top of my head.

17 Q Yesterday, I have on my notes, that you referenced a
18 meeting where Terry Owens was speaking out to the Employer,
19 because I have that, was that, did you testify about that
20 yesterday?

21 A I believe what you're referring to is at the December 11th
22 meeting, Terry Owens was there and spoke up vocally --

23 Q Where was that meeting?

24 A That was, again, in the Fairfield Inn and Suites.

25 Q And who was invited to that meeting?

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1 A That was, again, a broader, general meeting, so this was,
2 again, through phone calls, some e-mails, I believe, but
3 primarily through word of mouth. It was disseminated to as
4 many people as we could get the word out to.

5 Q How many attended?

6 A That one was larger than the previous, so it was probably
7 about 30.

8 Q Are these employees, are these bargaining unit employees,
9 do they work eight hour shifts like, like, you know, 3-eight
10 hour shifts or a 24 hour shift? When do they work?

11 A It varies. The three main shifts during the weekday,
12 excluding Supportive Living Light, that's a little bit
13 different, I think as Alan Frey testified to, but basically,
14 the three main shifts during the week are basically morning,
15 swing and grave, which morning is 7 a.m. to 3 p.m. usually.
16 Swing is 3-to-11 usually and grave is 11 p.m. to 7 a.m. On the
17 weekends it is different. There is two 12's usually, which is,
18 I think 7-to-7.

19 Q And you said the, I'm gonna use the term, Living Light, if
20 I --

21 A Yeah, Supportive Living Light is different because
22 basically these are staff that work with multiple clients, who
23 don't get 24 hour care basically, so it's kind of, they set
24 their, not to their own schedule, but they basically kind of
25 set certain hours that they bounce from house-to-house to give

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1 them a few hours, but to multiple clients rather than just one
2 or two.

3 Q But does that mean they end up working basically an eight
4 hour shift also?

5 A I believe it tends to work like that, yeah.

6 A Okay. Do you have any idea what percentage of the people,
7 the Living Light employees versus the rest?

8 A Yeah, it was a lot smaller. At the time, it was, probably
9 would be anywhere between 12-to-15 out of 150.

10 Q So, so, when you set up the meeting then, at any given
11 time, if you don't do that on both ends of the day, you're
12 gonna lose the ability of some people to attend, correct?

13 A That is correct.

14 Q Okay. So, so the meeting where Ms. Owens spoke up, what
15 was the date of that meeting, if you recall?

16 A Mr. Owens?

17 Q Mr. Owens?

18 A Terry Owens, well he spoke up in pretty much every meeting
19 attended, but that specific one where he mentioned that he was
20 going to be meeting with Alan Frey, I believe was the 11th, a
21 Sunday.

22 Q Well, you also testified about the vote count on March 15
23 --

24 A Correct.

25 Q -- of 2012, correct?

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1 A Yes.

2 Q Okay. So your Petition was filed in December of 11?

3 A That is correct.

4 Q And the vote was on, was the vote the same day as the
5 count on March --

6 A No, it was decided to be a completely mail ballot
7 election.

8 Q Oh, okay.

9 A Just due to the, you know, disperse nature of the
10 workforce and there was no real centralized area and so the
11 ballots, I believe went out the end of February, like the 24th.
12 They were due back, you know, the day before, a couple of days
13 before the vote count, but the votes were actually tallied on
14 the 15th, the morning of.

15 Q And I think you said they were tallied right in this room?

16 A That is correct.

17 Q And you said that down the hall from here in the front of
18 the NLRB office was a bit of a celebration by the, by the Union
19 supporters, correct?

20 A That is correct.

21 Q And I think you estimated, did you estimate how many feet
22 from this door to this room to the NLRB door?

23 A I would say 15.

24 Q Okay. And from the center of -- where was the, would you
25 agree I'm in about the center of this room?

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1 A The August 6th one was held, I believe, and then the August
2 15th was cancelled a day or two prior by the Employer.

3 Q When did you next bargain as far as you can recall?

4 A September --

5 Q Well, let me check, check that.

6 A Sure.

7 Q What's the next bargaining meeting you attended?

8 A I'm trying to remember. I think there was one in
9 September, I'm not sure.

10 Q Okay. Were you present for any meetings in October?

11 A Yes.

12 Q How many?

13 A I believe there was only one, so just the one.

14 Q Were there any discussions there about getting new
15 bargaining dates?

16 A Yes, we discussed getting more bargaining dates. Again,
17 we, the Union, myself, Sarah Clifthorne, expressed interest in
18 moving the process forward, specifically through getting more
19 dates concrete and I believe it was this session or another one
20 where the attorney, Mr. Lofland, you know, said he didn't have
21 his calendar, he had to check with his assistant or whatever,
22 whoever that person may be and I'm not sure if he said it in
23 the meeting or via e-mail, but I remember reading or hearing
24 something where he said, basically, he was preparing for the, a
25 ULP hearing in this matter because there was some outstanding

1 service, but if you called the Spanish language line for basic
2 health, you would get me or one of the other Hibs that were
3 Spanish speaking.

4 Q Any other positions held prior to going to work for
5 AFSCME?

6 A No, that was it.

7 Q Alright. And when did you begin working for the Union,
8 AFSCME?

9 A Well, you mean officially, like paid to work for them or
10 just working with the Union?

11 Q In a hired, paid position?

12 A Okay. So that would have been probably 2008.

13 Q Say again?

14 A 2008, April of 2008.

15 Q Alright. And what was your position?

16 A I was a Union Organizer.

17 Q Your currently, I believe in your testimony yesterday, you
18 indicated you are a Journey Organizer?

19 A Yes, that is correct.

20 Q And when did you become a Journey Organizer?

21 A I was rehired back at ASCME Council 28 in August, 2011 and
22 at that time I took a position of Journey Organizer.

23 Q Alright. Now was there a gap in your employment at ASCME?

24 A Yes there was.

25 Q And when did that occur?

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1 is paid for, reimbursed through the state, I beleive Medicaid
2 program. At that time, it was administered through DSHS, now
3 it's under, I believe, HCA, but, the Health Care Authority, so
4 I started that campaign. That one, the vote happened after I
5 was in New York, but I was there for the beginning of that and
6 then when I came back we, we won, that one was successful, but
7 we didn't get all of the, all of the interpreters in there.
8 There is, you know, so that was specifically for the medical
9 and the social and health services, but there is also, for
10 labor and industries, like the funding stream is different, so
11 essentially, they weren't included in the original legislation
12 that gave us that bargaining unit, so we tried to pass
13 additional legislation to get these other groups of
14 interpreters that weren't originally included, because a lot of
15 them are the same interpreters, they work multiple jobs, so we
16 did a, you know, we signed them up on union cards, there was a
17 whole legislative and political action effort to mobilize
18 around that, a lot of lobbying, etc cetera, etc cetera.

19 Q Let's talk about the KTSS organizing drive.

20 A Sure.

21 Q Were you assigned by AFSCME as the, I don't know how you'd
22 phrase it, primary or lead organizer?

23 A I believe that, yes, that's how I would phrase it,
24 primary point person for the campaign, yes.

25 Q Now, working for AFSCME, were you required to prepare and

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1 file reports regarding the progress of the organizing?

2 MR. JENSEN: I object to this line of questioning. I
3 don't see where it is relevant. I see it getting into internal
4 Union affairs and I believe, object.

5 JUDGE POLLACK: Overruled.

6 Q Do you remember the question?

7 A You, one more time?

8 Q I will try.

9 A Yeah.

10 Q Being employed by AFSCME, and being the lead or point
11 person in the KTSS organizing, were you required to prepare and
12 file reports with the Union about your organizing efforts?

13 A I don't think it was ever required, no.

14 Q Okay. Did you do so?

15 A Yeah, I would give them updates, yes.

16 Q And were those reports in writing?

17 A Some were, yes.

18 Q Did you maintain notes or logs of your activity?

19 A Yes, we have a database that we use for organizing
20 campaigns that has information.

21 Q Is there a name for it other than database for union
22 organizing?

23 A It was, well, they switched it up. At the time, we were
24 using one called NUWS, the New Union Work Systems, but we
25 recently switched to what's called VAN, which is Voter Access

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1 Network.

2 Q And is that database the one into which you would input
3 reports and logs and notes of what you're doing?

4 A That is correct, yes. That is where all information,
5 because organizers can come and go, so you've got to centralize
6 it so people can kind of know what is going on, so we put notes
7 in that.

8 Q And I take it from your answer that this is an electronic
9 database?

10 A That is correct.

11 Q When you, when you began working with, with KTSS employees
12 who showed an interest in or support of the Union, this was
13 sort of an ongoing, growing process, is that a good way to
14 describe it?

15 A Yes.

16 Q It'd start with a group of people who showed an interest
17 and you would then try to expand that?

18 A At the beginning, not really. The expansion really came
19 again when I mentioned the blitz, because before that, I tried
20 to keep it as limited and tight lipped as possible. So the, I
21 would say the expansion part of it came in December. Up until
22 then, I tried to keep it as, I would instruct people not to
23 really talk about it or invite other people into it.

24 Q Alright. So the core group, prior to December, were
25 trying to, you were trying to keep it secret and contained what

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1 you were doing?

2 A That would be my intention, yes.

3 Q And then when you got to the blitz, that was the time that
4 you expanded it and tried to go further and get more people
5 interested?

6 A Yes, that's correct.

7 Q Now, when you talked to the core group of employees, did
8 you tell them that the Employer could not terminate them for
9 their Union activity and Union support?

10 A I explained my understanding of labor law to them and my
11 understanding is that legally they are not allowed to terminate
12 them for their Union support.

13 Q Did you also explain to them that an Employer could indeed
14 terminate them if they didn't perform their work satisfactory?

15 A No, I don't think I said that specifically, because I feel
16 like that was understood, that if you don't do your job, you
17 can get fired, so, I don't know if I actually ever said that.
18 I was, I can't recall.

19 Q Let's then move forward to the next stage, the blitz.

20 A Yes.

21 Q And the blitz, you were talking about meetings right
22 around the first weekend of December, is that correct?

23 A That's correct.

24 Q That would be, only because I looked it up, December 3rd,
25 4th and 5th? Does that comport with your memory?

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1 A Yes.

2 Q And in that blitz, did you tell employees that an Employer
3 could not terminate them for their Union activity?

4 A Me specifically or --

5 Q Did you tell them? That's the first question.

6 A I can't recall. Normally, I, if someone raises it, I
7 would definitely address it. It's not part of my normal, I
8 don't recall.

9 Q Were you present during any meetings in the blitz or any
10 participation in the blitz, of December 2nd, 3rd or 4th, around
11 that time, when anybody else told employees that they could not
12 be terminated for Union support or Union activity?

13 A During the blitz? There was only the one meeting, so, I'm
14 not, I can't recall if it came up at that meeting, honestly.

15 Q Did you tell, going back to prior to the blitz, did you
16 tell employees that you and the Union would protect them if the
17 Employer took adverse action against them?

18 A I remember one specific meeting with some of the core
19 committee before the blitz when this question was raised by
20 them, can we be fired? I told them bluntly that in my
21 experience and what I've seen is that people do get fired
22 during organizing campaigns, usually employers are not gonna
23 give them a smoking gun and say it's because of X, Y, Z. They
24 tend to start enforcing things more strictly, playing gotcha
25 and so, in explaining that, I explained, you know, what the

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1 NLRB looks for in terms of proving discrimination, you know, it
2 being public, disparate treatment, again it is my
3 understanding, I'm not a lawyer by any stretch of the
4 imagination, my, what I, and actually, I believe my boss, Megan
5 Park, was present at this meeting was, we said anyone that is
6 willing to stand up, to exercise their fundamental rights, our
7 Union would support them through whatever processes resulted,
8 if they were fired and it was deemed, you know, to be
9 retaliatory in nature. And that would include through, you
10 know, filing of the unfair labor practice.

11 Q At any time up until the blitz, had you obtained a copy of
12 the Employer's Handbook of Rules?

13 A Before the blitz?

14 Q Yes.

15 A I believe so, yes.

16 Q And did you read those?

17 A I'm sure I would of. I don't know if I read the whole
18 thing, but I'm sure I would have at least glanced through it,
19 yes.

20 Q Alright. You said you're sure of, do you have a specific
21 memory that you read the Employer's Handbook or policies prior
22 to the blitz?

23 A I remember, I do remember, I'm fuzzy on the timeline, but
24 I do remember seeing the no soliciting phrase in the handbook,
25 I remember that.

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1 Q Is that all you remember prior to the blitz?

2 A Yeah, primarily, yeah.

3 Q Alright. Up until that point, had you ever worked with a
4 company or been involved with a company that dealt with
5 developmental and disabled people?

6 A You mean, have I personally worked with the company that -
7 -

8 Q Yes.

9 A No, not that I can recall.

10 Q Between the, after the blitz occurred --

11 A Yes.

12 Q -- during the month of December, did you ever read the
13 Employer's Policy Manual and Rules more completely?

14 A Yes, I remember focusing more on it prior to the, there
15 was a, an R case representational hearing in January and so I
16 remember going over it and giving a copy to our attorney at the
17 time, who was Mr. Younglove.

18 Q At that same time, that same time period, which would
19 include the time prior to the blitz and then following the
20 blitz until January, did you ever read the Washington
21 Administrative Code, the regulations dealing with this type of
22 business?

23 A Yes, I began to familiarize myself with some of it during
24 that time. I couldn't say for sure, well, I couldn't say for
25 sure if it was at that time if I did or not. I know I have

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1 since, but I can't remember if it was during that time though.

2 Q And what about the Department of Social and Health

3 Services Policies? Have you ever read them?

4 A Yes, I have. Some, I can't say all.

5 Q And I probably didn't speak well. The Department of

6 Social and Health Services has --

7 A Yes.

8 Q -- volumes and volumes. I should have asked you, the

9 Department of Social and Health Services Policies that relate
10 to developmental disabilities?

11 A Yes.

12 Q And was that prior to January of --

13 A Yes, normally, and in this case as well, I try to
14 understand as much about a company and the industry as I can,
15 so that includes usually, depending on the industry, any sort
16 of trades magazines, special development, anything I can find
17 out about the company online, any sort of, what regulatory
18 agencies interact with it. We also have access to, ASCME
19 International has strategic researchers, who that's basically
20 their job is to identify companies and give us as much
21 information as they can around them.

22 Q Okay. When you met with employees, both the core group
23 and then after the blitz, up until January --

24 A Yes.

25 Q -- did you tell the employees that they needed to follow

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1 the rules?

2 A I definitely remember recalling in that same conversation
3 where we spoke about, with that small group, about the
4 possibility of being fired. I told them that, again, in my
5 experience, that once they have been outed as being public and
6 supportive, there will be a magnifying glass on them and what
7 they may, what may have been okay before, is now definitely not
8 okay. Antyhing, I, basically I told them, you know, people
9 will be looking to catch you on anything and so that was pretty
10 much the only time, I think I --

11 Q And who did you tell that to?

12 A I'm trying to think who was at that meeting. I know Jack
13 Hopkins was there, Caitlin Steel --

14 Q Johnnie Driskell?

15 A I want to say she should have been there, if she wasn't.
16 I couldn't say for sure though.

17 Q Lenora Jones?

18 A I don't think she was at this one, this one was at
19 Denney's. I don't think she made that one.

20 Q Do you remember who else was present at that meeting when
21 you said that?

22 A It was a smaller group than usual, so I want to say, I
23 know Jack was there, I remember Caitlin Steel, Megan Park, my
24 boss, me. I'm sorry, I can't recall.

25 Q Would that meeting be reflected in the notes that you put

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1 into the database?

2 A Nah, I didn't take notes on that.

3 Q Why not?

4 A Generally, I don't really take, well, truthfully, my boss
5 will probably be mad. I'm not super great at taking notes.

6 It's the bane of my existence, I like to imagine that I can get
7 by with my head, but, so I don't often take a lot of meeting
8 notes unless it is so, like a bigger meeting where I might take
9 attendance, so like at some meetings, we'll do like a sign-in
10 sheet, but that's usually if it's like a bigger, but for the
11 small, like committee meetings, I didn't take notes and I
12 didn't do a sign-in sheet.

13 Q Okay. In your testimony yesterday, you said something
14 about a meeting with the committee December 7th and providing
15 them questions to ask, do you remember that testimony?

16 A Uh-huh.

17 Q Did you, is that a yes?

18 A Yes.

19 Q I'm sorry?

20 A Yes.

21 Q You need to say yes or no so we make sure the record is
22 clear.

23 A Sure.

24 Q So we'll work together. Were those questions that you
25 provided questions that were in writing?

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1 A No. No.

2 Q You provided the questions to them orally or verbally?

3 A It was more of a role play. It was just kind of like a
4 what if scenario.

5 Q Alright. So tell me what you did. What was the role
6 play, what questions did you model or play roles about?

7 A Well basically, I told them there was a couple of
8 different ways you can approach strategically, one of these
9 captive audience meetings. One is you can go on the offensive,
10 so to speak, and basically out yourself as a public union
11 supporter and try and dissipate the fear through saying, you
12 know, I support the Union, I think it is a good idea and here
13 is why. I told them that a point of these meetings was to
14 focus on all of the million horrible reasons why it wasn't a
15 good idea to have a union and that a good tactic to counteract
16 that is to focus on the reasons why people want a union, which
17 is, no affordable health care, low wages, you know, no just
18 cause or seniority or fair, you know, workplace rules.
19 Basically what was important to them in their own words about
20 why they actually wanted a union and what they were hoping to
21 achieve. I also said, you know, you can ask them, you know,
22 why are you here, like if it's, I mean, if it is an outside
23 consultant, why are you here, what's, you know, what, how much
24 are you being paid, those, that's kind of what I remember.

25 Q Okay. And when did the captive audience meeting take

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1 place?

2 A I believe it was two days, the 7th and the 8th.

3 Q And am I correct that your testimony yesterday was that
4 those meetings included home care people?

5 A That was my understanding, that's what the committee told
6 me. I was not present.

7 Q Now the meetings you had with employees included Community
8 Protection employees?

9 A That is correct.

10 Q And in the beginning, did you tell Community of Protection
11 workers that they were not eligible to be included in the unit?

12 MR. FIOL: Objection. I mean, it calls for a legal
13 conclusion.

14 JUDGE POLLACK: Overruled. You can answer it.

15 A So, the question was, one more time?

16 Q When you met with employee who were employees of KTSS and
17 were Community Protection workers, did you tell them that they
18 were not eligible to be in the unit?

19 A No.

20 Q You told them that you would be interested in representing
21 them and that they would be a part of the unit?

22 A I said that they would, we were signing them up to be a
23 part of an election, yeah.

24 Q And when the Employer said that they were not eligible,
25 did you tell employees that that position was nonsense?

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1 Q Okay. So you don't know?

2 A I told him to keep things calmed down? I don't remember.

3 Q Mr. Owens said that he was going to talk to Mr. Frey about
4 this?

5 A He mentioned that he was going to talk to Alan Frey
6 shortly thereafter and he was going to ask him questions, some
7 related to the financial stuff, but if anybody else had other
8 questions, he would ask them for them as well and share, share
9 what information he got.

10 Q Okay. And did you give him questions to ask of Alan Frey?

11 A I don't know if I gave him any specific questions, that I
12 can recall.

13 Q Did you tell him that when he met with Mr. Frey he needed
14 to be calm and maintain a reasonable standard of meeting?

15 A I didn't that I recall. I don't think I would have said
16 that and I don't recall saying that.

17 Q You would have hoped that he would have been agitated when
18 he came to Mr. Frey?

19 A No.

20 MR. JENSEN: Objection.

21 MR. FIOL: Objection.

22 Q You talked about the photo of, the combination of the
23 organizing group and the supporters, is that a good way to do
24 it? You took photos of them and you made it into a sheet?

25 A Yes, a flyer.

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1 Q A flyer? When, when, what date was that flyer sent to
2 employees?

3 A It was mailed out mid-December, on the 14th, I believe.

4 MR. JENSEN: I'm sorry, I didn't hear the end of your
5 answer.

6 THE WITNESS: The 14th, I believe, mid-December.

7 Q And what do you base that on, memory?

8 A No, on, I tried to retrieve a copy of it and so I went in
9 and asked the Administrative Assistant who mailed it, I tried
10 to find a copy because we had e-mailed back and forth with my
11 boss who created it and so I was looking to find a, the final
12 version and I saw that, I found an e-mail where it said it was
13 mailed out on December 14th.

14 Q And this was a document that was, do you have a copy of
15 this?

16 A Yes, I do.

17 Q And to whom was this mailed?

18 A I couldn't speak to the, I wasn't the one that mailed it,
19 and I wasn't necessarily on the conversation of who it was
20 directed to. My understanding was that it was mailed to
21 everyone that we had an address for.

22 Q Okay, let's -- do you still have General Counsel's, I'll
23 get it right this time, 129 in front of you? That's the --

24 A No, I do not.

25 Q -- form regarding --

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BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 19

In the Matter of:

KITSAP TENANT SUPPORT SERVICES,
INC.,

Respondent,

and

WASHINGTON FEDERATION OF STATE
EMPLOYEES, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL 28, AFL-CIO,

Charging Party

Cases: 19-CA-74715
19-CA-79006
19-CA-82869
19-CA-86006
19-CA-88935
19-CA-88938
19-CA-90108
19-CA-96118
19-CA-99659

The above-entitled matter came on for further hearing pursuant to adjournment, before, **Administrative Law Judge, Jay Pollack**, at the National Labor Relations Board, Jackson Federal Building, 915 Second Avenue, Seattle, Washington 98174 on Tuesday, September 10th, 2013.

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1 employed by KTSS?

2 A From 2008-to-2011, in December.

3 Q Okay. What was your position at the time that you left?

4 A Head of household.

5 Q And what is a head of household?

6 A It was, you oversee the stuff that goes on in the house,

7 set up doctor's appointments if the clients need help with

8 that, help them order pills. We just oversaw everything.

9 Q Did you have a staff that worked in your house?

10 A There was other staff that worked there.

11 Q And approximately how many staff members did you have

12 working with you?

13 A I'd say about six-to-eight.

14 Q When did you become the head of household?

15 A It was a year and a half before 2011, so in 2009.

16 Q Okay. Would be the end of 2009?

17 A Uh-huh.

18 Q What was the, what was the job location or where was it

19 that you worked out of?

20 A Job location was in Bremerton, Washington.

21 Q What particular house did you work out of?

22 A The Olympus House.

23 MR. LOFLAND: Say, say again, please.

24 THE WITNESS: Olympus House.

25 Q And did you work at the Olympus House the entire time that

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1 you worked through KTSS?

2 A Yes.

3 Q What type of clients did you serve over at the Olympus
4 House?

5 A CP.

6 Q What is a CP?

7 A Community protection.

8 Q Okay. And what is, what is, can you just tell the court
9 what community protection is or what, who these people are.

10 A They are people that need protection.

11 Q From what?

12 A From, it could be anything from people harming them to
13 them harming others.

14 Q Okay. And now before you started working for KTSS, can
15 you tell us what your prior history was regarding the, working
16 in this type of industry, the home health industry?

17 A Yeah, I worked at Communitas for six years.

18 Q And can you tell us what Communitas is?

19 A It's just like KTSS, working with development, disabled
20 adults.

21 Q Okay. And how long did you work for them?

22 A Six years.

23 Q Okay. And what were your job duties there?

24 A There I was, they call it DSP, director support person.
25 It was just a caregiver.

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1 Q Are those duties similar in any way to what you did at
2 KTSS?

3 A Yes.

4 Q You say you worked there for six years?

5 A Uh-huh.

6 Q And why did you leave?

7 A June, 2008, because KTSS offered me the position.

8 Q Okay. And old were you when you first started working at
9 Communitas, working in this home care industry?

10 A I think I was 19.

11 Q And since leaving KTSS, who have you worked for?

12 A I've worked at Bremer Care for like six months and then
13 they closed the doors.

14 Q And what is Bremer Care, what is Bremer Car?

15 A An adult family home for the elderly.

16 Q I see.

17 A And then I currently work at Marine Courte, and that's a
18 Memory Care, Alzheimer's.

19 Q Do you hold any type of professional license?

20 A I have my RNA.

21 Q What is an RNA?

22 A A registered nurse assistant.

23 Q And when did you receive that?

24 A In 2008.

25 Q The license?

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1 A Yeah.

2 Q I want to direct your attention now to the time that you
3 worked over at KTSS. Are you familiar with one of the houses
4 called the Rainier House?

5 A Yes.

6 Q And where is this Rainier House?

7 A It's in Bremerton.

8 Q Were you aware of a Christmas party that took place at the
9 Rainier House?

10 A Yes.

11 Q And how were you aware of that party?

12 A Prior, before coming head of household, I'd seen them do
13 it one year before that.

14 Q Did you ever attend?

15 A Yes, one year before that.

16 Q Okay. And when you say, "One year before that," is there
17 a year, do you remember the year. You started in 2009, so...

18 A In --

19 MR. LOFLAND: Just to clarify the record. You said she
20 said she started 2009. I'm not sure that that's what the
21 testimony has been.

22 THE WITNESS: It's, I started in --

23 MR. FIOL: No, no, wait a second.

24 JUDGE POLLACK: Okay, one at a time.

25 MR. FIOL: I just asked --

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1 household is a unit position, not a supervisor.

2 So his hearsay objection is sustained.

3 Q And going back to that first year that you attended the
4 party, were you required to go?

5 A I worked that day, so yes.

6 Q So, were there any other requirements other than showing
7 up to the party?

8 A Not that time, no.

9 Q Okay. Do you know if the clients were required to bring
10 anything to the party?

11 A They were required -- they brought their food that they
12 were asked to bring.

13 Q And do you know who paid for the food?

14 A The clients paid for whatever food they brought.

15 Q And who else brought food to the party?

16 A Staff.

17 Q And to your knowledge, you know, were the staff allowed to
18 eat from whatever food was brought to the party?

19 A Yes.

20 Q And were any gifts brought to the party?

21 A Any what?

22 Q Gifts?

23 A At the Christmas party.

24 Q Okay. And who, who, who brought the gifts?

25 A On the Thanksgiving one, they drew names, so they, whoever

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1 that drew A's name, they would provide client B a gift and vice
2 versa.

3 Q Now did there come a time when you became personally
4 involved in putting this party together?

5 A Yes, when I became Head of Household.

6 Q Okay. And can you tell us when exactly was that?

7 A I became head of household in -- the late 2009, so 2010,
8 that was my first year I did it.

9 Q Okay. And what happened to this person Chris who you said
10 was putting the party together?

11 A He was, I guess retired or moved on.

12 Q And was there anyone then at the Rainier House who was the
13 head of household?

14 A Yes, Johnson.

15 MR. LOFLAND: I can't hear.

16 A Johnson.

17 Q Is Johnson the person's last name or the person's first
18 name?

19 A His first name.

20 Q First name? Do you know the person's last name?

21 A No, I can never remember his name, last name.

22 Q Okay. So what did you do when the clients, so going back
23 to 2010 then. How did you get involved in putting the party
24 together?

25 A My clients asked me if we were going to have a

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1 Thanksgiving-Christmas party, so I took the initiative and
2 helped them set it up with, I did it with Johnson too, because
3 it's always set up at the Rainier House because their location
4 was more of an open field.

5 Q So let's talk about that. What did you do in putting it
6 together?

7 A What did I do?

8 Q Yeah.

9 A We'd set up the time, the place, which we always knew it
10 was at the Rainier House and we'd set up what the clients would
11 bring, we'd ask them how much they could contribute throughout
12 the menu.

13 Q Okay. And to your knowledge, did anyone at the office
14 know that you were involved in putting this party together?

15 A I didn't tell them, but...

16 Q So you didn't tell anybody?

17 A No.

18 Q Okay. Now was there a Christmas party in December of
19 2010?

20 A Yes.

21 Q Okay. And where was it held at?

22 A Rainier House.

23 Q And was there any change in the 2010 party compared to the
24 2009 party with regard to bringing food?

25 A Not that I, the way I scheduled, it was the same way that

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1 I saw it was done.

2 Q And how about with the gift, the gift exchange?

3 A Same way, drew names.

4 Q So let's move forward to 2011. Can you tell us what
5 happened then?

6 A In November, or it was beginning of late October, me and
7 Johnson set together and scheduled it, all the same, which we
8 do every year.

9 Q What did you put together in October of 2011?

10 A The Thanksgiving and the Christmas party.

11 Q And did you hold the Thanksgiving party?

12 A Yes.

13 Q Okay. And where was that held at?

14 A The Rainier House.

15 Q Okay. And how about the Christmas party, where did you
16 hold the Christmas party at?

17 A In the, they rescheduled it and either they, okay. I had
18 it scheduled and then we cancelled it.

19 Q Okay. So, let's start there. When did you have it
20 scheduled for?

21 A I think it was the day before Christmas.

22 Q Okay. And then did anything happen to make, to, with that
23 original schedule?

24 A Yes. Okay. Tell us what happened?

25 A I kept on getting calls from other head of households

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1 saying that residents couldn't afford it, so we decided, me and
2 Johnson, to combine the parties in the November one because it
3 was already like a couple of days before the Thanksgiving one.
4 And since we'd already paid for it, so we decided to just have
5 one party.

6 Q And so how was that party? Was there a gift exchange?

7 A No, because that would have been on the Christmas one and
8 it was already Thanksgiving.

9 Q How about food?

10 A Food was already.

11 Q So can you tell us what happened then after the, the
12 Thanksgiving Party with, regarding this Christmas party? Did
13 there come a time when that changed again?

14 A Can you repeat that again?

15 Q Okay. I'm sorry. You said that there was a cancellation
16 of the Christmas party?

17 A Uh-huh.

18 Q Okay. Did there come a time then when you had to change
19 again and reschedule it?

20 A Yes.

21 Q Okay. Can you tell us about that?

22 A I was called by Jaime and asked to reschedule everything.

23 Q Jaime? Who is Jaime?

24 A The accountant at KTSS.

25 Q Do, do you know the last name?

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1 A Cannot remember her last name. I'm not the best person
2 remembering last names.

3 Q Does the name Jamie Callahan sound familiar?

4 A Yes.

5 Q Okay. And you're saying that she called you?

6 A Yes.

7 Q Okay. Do you recall when she called you?

8 A Yes.

9 Q And can you tell us when that was?

10 A That was December 6th.

11 Q Of 2011?

12 A Uh-huh.

13 Q What did she say?

14 A That --

15 MR. LOFLAND: Well, I'm going to object that there is no
16 showing that Jamie is a speaking agent of the company.

17 MR. FIOL: Well, she's alleged to be an agent and that's
18 yet to be resolved, but --

19 JUDGE POLLACK: All right. Go ahead.

20 MR. FIOL: -- opposition is that she was an agent and it
21 will be proved later on through additional evidence.

22 JUDGE POLLACK: All right. Go ahead.

23 MR. FIOL: Okay.

24 Q So going back to December 6th, you said you received a call
25 from Jamie Callahan?

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1 A Uh-huh.

2 Q And the question was, what did, what did she say?

3 A That we needed to --

4 MR. LOFLAND: Your Honor, could, could we ask the witness
5 to speak up a little bit. I'm losing about half of what she
6 says.

7 JUDGE POLLACK: Okay. Can you please speak up? Everybody
8 needs to hear you.

9 THE WITNESS: I understand, I just, I don't know what to
10 tell you, I'm a very quiet speaker too. I will try my best.

11 MR. FIOL: Would you like to --

12 JUDGE POLLACK: Thank you.

13 MR. FIOL: -- have some water? There is some water there
14 in case you need it. Okay.

15 Q The question again, what did she say?

16 A That the clients had brought it up that they wanted to
17 have the Christmas party.

18 Q Okay. And then what did you say?

19 A I said okay and I took the initiative and set it all up.

20 Q When you say you took the initiative, what did you do?

21 A Me and Johnson, we scheduled it all.

22 Q The Christmas party?

23 A Yes.

24 Q Okay. And so this is December 6th, correct?

25 A Uh-huh.

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1 Q Okay. Can you tell us then December 7th, do you recall
2 working that day?

3 A Yes.

4 Q Okay. And can you tell us what happened the morning of,
5 what time did you work? What time did you report to work?

6 A I come to work at 6:30, I think it was.

7 Q Okay.

8 MR. JENSEN: A.M. or P.M.?

9 THE WITNESS: P.M.

10 MR. FIOL: A.M. sir.

11 Q Okay.

12 MR. LOFLAND: With all due respect, I think we need to
13 have one person questioning at a time.

14 MR. FIOL: Yeah, I --

15 JUDGE POLLACK: All right. Go ahead. Come on.

16 Q So can you just tell us what happened that morning when
17 you went to work?

18 A I got to work and it was our normal day. The clients
19 start getting up about 7:30, 8:00 o'clock and they were sitting
20 down for breakfast and taking our, their medications, just sit
21 with them and help them make sure they are taking the right
22 ones and then I got a phone call from Alan.

23 Q Is Alan, Mr. --

24 A Yes, Alan Frey.

25 Q Okay. And what was, what did he say to you?

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1 A He was telling me that I needed to set up the Christmas
2 party, that I had no right to cancel it.

3 Q What did you say to him?

4 A I understood and we talked about it and he suggested,
5 because I explained the whole thing about the clients couldn't
6 afford both of them and why I cancelled it. So then he had a
7 suggestion of resetting it up. Instead of everybody bringing
8 something, we, they contribute \$10 to the, like a pile of money
9 and then somebody goes and buys all the food and makes it. And
10 I said, "That's an awesome idea," and...

11 Q Okay. And then what, after he, how long was that
12 conversation about?

13 A Thirty minutes I'd say.

14 Q After that conversation, what did you do then after he
15 told you this?

16 A Went and got on the phone and just talked to Johnson and
17 we'd already started scheduling, but we finished scheduling it
18 and brought up the \$10 idea.

19 Q Okay. After you had that conversation with Johnson, what,
20 what did you do next that morning?

21 A Well we finished having our medicines and we got, later
22 that day the clients go bowling, so we headed to the bowling
23 alley.

24 Q And this bowling thing, is this a normal practice, a
25 normal routine?

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1 A Uh-huh.

2 Q Anyone else besides your house at the bowling alley?

3 A Yeah, the majority of all the houses, it's a CP Program

4 go,

5 Q Same day?

6 A Uh-huh.

7 Q Okay. And what happened at the bowling alley?

8 A We talked to all the clients and figured out which one

9 wanted this, they'll do the gift exchange and putting their

10 names in the drawing, drew names. We talked to what they, what

11 the residents and clients about the menu. And finished up the

12 small details.

13 Q Okay. Do you recall receiving any phone calls while you

14 were at the bowling alley?

15 A Yes, after I was done with setting everything up and we

16 were enjoying bowling, I got another phone call from Jamie.

17 Q Okay. And what did she say?

18 A She told me Alan would like to have a meeting with me.

19 Q And by the way, just for clarification, when you say

20 Jamie, is this Ms. Callahan?

21 A Yes.

22 Q Okay. And what did she say?

23 A That Alan had asked her to call me to set up the meeting

24 to meet that afternoon.

25 Q Okay. Did she say anything else, do you recall?

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1 A Not that I remember.

2 Q Okay. So what happened next? Can you tell us after this,
3 you received that phone call?

4 A It was already really close to that time, so after --

5 Q Well, when you say close to what time?

6 A The time of that meeting he wanted, so we finished up
7 bowling and took the clients home and then I went to the
8 office.

9 Q Okay. So when you got to the office, what did you do?

10 A Allan and Kathy took me to the back office. I've never
11 been in there. It was like a conference room kind of thing.

12 Q And when you say Kathy, who is Kathy?

13 A Kathy Grice.

14 Q Okay. So they took you to this room?

15 A Uh-huh.

16 Q Who else was there besides you, Kathy and Mr. Frey?

17 A That was it.

18 Q Okay. And can you tell us what happened in that room,
19 that, when you reported to that room.

20 A Exactly the same thing on the phone call. He was telling
21 me that I couldn't cancel the Christmas party, that I had no
22 right to do that.

23 Q Uh-huh.

24 A And that I needed to reset it up.

25 Q Uh-huh.

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1 A I'd already told them I had reset it up, I took his advice
2 and did the \$10 per client that wanted to contribute to the
3 menu, reset up the gift exchange for the ones that wanted to do
4 the gift exchange.

5 Q And what did he say?

6 A I think he said okay.

7 Q How long approximately did that meeting in that backroom
8 last?

9 A Not very long. I'd say maybe 20 minutes at most.

10 Q After you left, did there come a time when you left that
11 meeting with Mr. Frey?

12 A Yes.

13 Q Can you tell us where you went after that?

14 A It was our mandatory, mandatory meeting that the anti-
15 union, but they didn't want us to, it wasn't anti-union, but it
16 was for the union.

17 Q All right. So there was a meeting?

18 A Yeah.

19 Q Okay. Let's go to that meeting. You walked out of this
20 office, where did you, where was this meeting held at?

21 A The other conference room that's, kind of like on the
22 other side of that wall, but you have to go around to get to
23 it.

24 Q I see. Okay. So when you arrived at, how much time
25 elapsed from the time you left the meeting with Mr. Frey and

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1 walked into this mandatory meeting?

2 A Maybe ten minutes, because I went to use the restroom.

3 Q Okay. Now once you got in there, can you tell us how many
4 people, approximately how many people were in there?

5 A I'd say about ten, maybe 15 at most.

6 Q And who were these people that were in there?

7 A Other employees.

8 Q Okay. And then did there come a time when that meeting
9 started?

10 A Yeah.

11 Q Okay. Now, can you tell us who conducted that meeting?

12 A I can't remember his name.

13 Q Was, when you say his name, was it someone that you never
14 saw before?

15 A Oh yeah, I've never seen him before.

16 Q What did this person, --

17 A He was the speaker.

18 Q -- oh, I'm sorry, What did this person say?

19 A He was talking about the union.

20 Q I see. He wasn't someone that you'd seen before?

21 A No.

22 Q Okay. Okay. Can you tell us then, when he talked, was
23 anyone from management there with him or was --

24 A At the very beginning they introduced themselves and
25 introduced him and...

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1 Q Who do you recall from management being in there at the
2 very beginning?

3 A I know Mike Closser was there.

4 Q And Mike Closser is the, the CEO, is that --

5 A Yeah, the owner.

6 Q All right. And who else do you recall being there?

7 A And I know Kathy was there. I believe Alan was there.

8 Q Okay.

9 A I can't remember if anybody else was there.

10 Q And then, and then what happened? You said they
11 introduced him?

12 A They introduced him and told us to have a good day and
13 they left the room.

14 Q The management people left the room?

15 A Yes.

16 Q Okay. So now the consultant, the person was there?

17 A Uh-huh.

18 Q What did he, what did say?

19 A He was talking about the union and how his thoughts were
20 on how unfair the union could be and how they charge us monthly
21 fees, just his thoughts on the union.

22 Q How long did he talk?

23 A It seemed no more than an hour.

24 Q Okay. And did there come any time when people other than
25 this consultant spoke?

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1 A Yes, and the staff, it's like question and answer.

2 Q I see. Okay. Tell us a little bit then about this
3 question and answer. Do you recall if anyone engaged in
4 conversation with this person?

5 A There was at least three of us that asked questions.

6 Q Who were the three people?

7 A There as Jack asked a question.

8 Q Is it an employee?

9 A Yes.

10 Q Okay. And who else?

11 A Johnnie asked a question. She was in the meeting.

12 Q Is she --

13 A And I asked a question.

14 Q You asked a question?

15 A Yeah.

16 Q Let's go to the question that you asked.

17 A Uh-huh.

18 Q Okay. What did you ask this person?

19 A I just asked him how much he was going to pay to conduct
20 this meeting.

21 Q What did he say?

22 A He told me it was none of my business.

23 Q Now after you said this, how much longer did this meeting
24 last?

25 A Oh, that was the end of it.

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1 Q That was the end of the meeting?

2 A Yeah.

3 Q Okay. So did you have any place to go after this meeting?

4 A Yes.

5 Q Where?

6 A I went to the Fairfield Inn where the Union meeting...

7 Q It was a Union meeting?

8 A Yes.

9 Q And where is the Fairfield Inn?

10 A It's in Bremerton by the ferry dock.

11 Q Okay. So can you tell us, did anything happen while you
12 were at this Union meeting?

13 A I got a phone call after it started.

14 Q Who called you?

15 A It was Kathy.

16 Q Is that Kathy Grice?

17 A Yes.

18 Q Why did she call you?

19 A To tell me that Alan and Mike Closser has chosen to
20 terminate my employment.

21 Q Did she say why?

22 A For insubordination.

23 Q What did you do next?

24 A I told her nicely that I gotta let her go, I was not
25 handling the news very good, which, whoever does.

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1 party?

2 A What's I say, 2009? Yeah, 2009, right.

3 Q Okay. And was that both Thanksgiving and Christmas?

4 A Yeah.

5 Q Okay, 2009. And then in 2010, did you, was it you who
6 with Johnson put together the parties?

7 A Me and Johnson, yes.

8 Q Okay. Did anybody tell you how to do that?

9 A No, I saw it done in 2009.

10 Q So you took what you, what you'd seen being done and you
11 kind of ran with, from what you thought was happening?

12 A Yes.

13 Q And were you working hand-in-hand with Johnson?

14 A Yes.

15 Q Okay. And then that takes us to 2011, which you've
16 described.

17 A Uh-huh.

18 Q To your knowledge, then had anybody ever asked you to take
19 on these chores?

20 A No.

21 Q Had anybody told you not to do so?

22 A No.

23 Q Had anybody told you how to do it?

24 A No.

25 Q Is there any protocol on it, as far as you know?

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1 A No.

2 Q Has anybody ever told you there is a protocol specifically
3 on this?

4 A After I got fired they said there was, but I never saw one
5 in the personnel, in the employee handbook.

6 Q Did they ever show you what the protocol supposedly was?

7 A No.

8 Q Did they ever tell you what that supposedly was?

9 A No.

10 Q Do you have any idea what that protocol supposedly was?

11 A No.

12 Q Now, I guess these parties, were they always held at
13 Rainier House?

14 A Yes, because they had that more open location.

15 Q Okay. And so people from the various houses were invited
16 to attend?

17 A Yes.

18 Q Was it required that they attend or just invited?

19 A No, they were just invited.

20 Q As to the gift exchange, that's optional with people, they
21 draw names or put in money or do what they want voluntarily?

22 A Yeah, they volunteered their name into the drawing.

23 Q Okay. What, what about the food? Was the food, at 2009,
24 was the food shared by everybody?

25 A Uh-huh.

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- 1 Q Staff?
- 2 A Yeah.
- 3 Q Management?
- 4 A Management usually didn't go.
- 5 Q They didn't go? Okay. Clients?
- 6 A Yes.
- 7 Q And who paid for the food?
- 8 A Everybody would bring their own stuff.
- 9 Q Okay.
- 10 A So kind of like a potluck.
- 11 Q In 2010, the one that you put together then, how did, how
- 12 was the food done?
- 13 A Same way.
- 14 Q Same way. Who was, in 2010, the one that you put together
- 15 or the two that you put together, was it more your coordinating
- 16 this than Johnson's or was he an equal partner or how did that
- 17 work out?
- 18 A He was an equal partner because we talked over the phone
- 19 over everything.
- 20 Q Okay. What was his position at the time?
- 21 A Head of household.
- 22 Q Okay. What house was he head of house?
- 23 A Rainier.
- 24 Q Oh, okay. At the home site, so to speak?
- 25 A Yeah.

1 Q What about 2011, the one where you folks decided initially
2 to do the Thanksgiving party.

3 A Uh-huh.

4 Q Was that put together the same way you and Johnson, hand-
5 in-hand?

6 A Uh-huh, yes.

7 Q Equal roles?

8 A Yes.

9 Q When the 2011 Christmas party was initially cancelled, was
10 that a decision made just by you or was that you and Johnson
11 together?

12 A Me and Johnson. I had always talked to him first.

13 Q Okay. Did you have any authority over him on this?

14 A No.

15 Q Okay. Do you recall whether it was you who had that
16 initial idea or whether it was Johnson or was it from somewhere
17 else?

18 A I kept getting calls from other head of households saying
19 that their clients couldn't afford it, so I brought it up to
20 Johnson.

21 Q What did Johnson have to say about that?

22 A He said, "Yeah, that makes sense. We have one, because
23 then the clients wouldn't have to pay for two different foods
24 and stuff.

25 Q Did, did, when these head of households were calling you

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1 and saying that the clients couldn't afford this, did they
2 suggest that you have one party or not have a Christmas party?

3 A I don't remember.

4 Q Okay. When you met with Alan Frey and or Kathy Grice
5 about this, did you tell them that the head of households were
6 calling you and saying people, clients couldn't afford this?

7 A Yes, I believe so.

8 Q What did they say about that, if you recall?

9 A That's when Alan suggested the \$10 instead of certain
10 foods, everybody contribute \$10.

11 Q When you were at that meeting with Alan and with Kathy
12 Grice, when you went in there, did anybody takes notes in that
13 meeting as far as you know?

14 A I honestly don't remember.

15 Q Okay. You didn't take notes?

16 A No.

17 Q You talked about the mandatory meeting?

18 A Uh-huh.

19 Q And you used the phrase when you testified, "For the
20 Union." I think, you, I think what you're trying to --

21 MR. LOFLAND: Oh, no, no, come on. That's leading, that's
22 improper.

23 MR. JENSEN: Okay. I'll rephrase it.

24 Q Whose meeting was that?

25 A The office set it up with the gentleman --

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1 Q The Employer?

2 A Yes.

3 Q Was it the, did the Union have anything to do with calling
4 that meeting?

5 A No.

6 Q Now you said that management, several management officials
7 were there at the beginning of the meeting and then they left
8 early on.

9 A Uh-huh.

10 Q Do you know where they went?

11 A I'm assuming right outside the door to their offices.

12 Q You said at that meeting about three of you spoke up. You
13 talked about yourself. You said Johnnie spoke up.

14 A Yes.

15 Q Johnnie who?

16 A Driskell, I think her last name is.

17 Q Okay. Do you remember what Johnnie said?

18 MR. LOFLAND: Objection. Hearsay.

19 JUDGE POLLACK: Overruled, it's not being offered for the
20 truth of the matter asserted, just that it was said. Go ahead.

21 Q Do you remember what Johnnie said?

22 A I was, honestly, going to say I don't remember.

23 Q Okay. Was it something, was there a tenor that was for or
24 against the Union?

25 A It was for the Union.

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1 Q Okay. Jack, do you remember Jack's last name?

2 A No.

3 Q Does Jack Hawkins ring a bell?

4 A Yes.

5 Q Was it Jack Hawkins?

6 A Yes.

7 Q Is Jack Hawkins still employed there?

8 A As far, I think he retired, as far as I remember being
9 told.

10 Q When you were called at the Fairfield on the 7th and told
11 you were terminated for insubordination, you said it was by
12 Kathy Grice?

13 A Yes.

14 Q Did she have anything else to say to you other than they
15 told, they decided to terminate you?

16 A Well, she said that she's there for me and she feels sorry
17 and that if I needed to talk, Alan would be more than willing
18 to set up a meeting.

19 Q Ms. Minor, before your notice of termination and other
20 than, if we weren't to include any of these meetings and
21 conversations you had with Alan or Kathy in December of 2011.

22 A Uh-huh.

23 Q Had you ever been disciplined before that?

24 A No.

25 **(Charging Party's Exhibit 1, marked for identification)**

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1 Q I have placed before you a document that I've marked as
2 CP, for Charging Party, 1. And I ask you to take a moment,
3 please, to read that to yourself and when you're done if, take
4 all the time you need, please look up and let me know you --

5 MR. LOFLAND: Counsel, what, what exhibit number is that?

6 MR. JENSEN: CP-1, Charging Party 1. I wrote it on yours.

7 MR. LOFLAND: Oh, thank you.

8 A Uh-huh.

9 Q Have you had a chance?

10 A Yeah.

11 Q Okay. Now, the first sentence talks about failing to
12 follow protocol set forth by a direct supervisor. Do you know
13 who they're referring to with the direct supervisor?

14 A I'm assuming Alan.

15 Q By the way, this is dated December 8th, does this, is this
16 a document you received from Kitsap Tenant?

17 A Yes.

18 Q When did you get it and how?

19 A In the mail, it was a couple of days later.

20 Q Okay. And then it says, the next sentences says, "On two
21 other occasions," you, "Showed poor attitude and judgment,
22 crossing professional boundaries, misrepresenting information
23 in regards to a client and staff, causing distress to the
24 clients you serve." Do you know what that refers to?

25 A No.

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1 Q Was there any, ever any discussion here in December with
2 Mr. Frey or Ms. Grice or anyone else from management about
3 those, quote, two other occasions?

4 A No.

5 Q Do you remember any other time anyone from management
6 talking to you about such matters?

7 A No.

8 Q When you got this letter, did you contact -- strike that.
9 Was your last conversation with management at KTSS when you got
10 your call from Kathy Grice on the 7th?

11 A No, I went in on the 8th and asked for this letter.

12 Q Okay.

13 A And then they wrote it to me and mailed it to me.

14 Q Did you have any conversations, who did you talk to when
15 you went there?

16 A Well I'd asked for the reception to ask for Kathy.

17 Q Uh-huh, Kathy Grice?

18 A Yeah, and she came out.

19 Q And gave you the letter?

20 A No. I asked for it and they mailed it to me after they
21 wrote it.

22 Q Okay. Was there any discussion about the substance of
23 this?

24 A No.

25 Q So the conversation was just, I need a letter explaining

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1 my termination?

2 A Yes.

3 Q And you haven't talked to anybody there since?

4 A No.

5 **(Charging Party's Exhibit 2, marked for identification)**

6 Q I'm handing you, Ms. Minor, what's been marked as CP-2 for

7 Charging Party Exhibit No. 2.

8 A Uh-huh.

9 Q And ask you to please take a moment to look that over.

10 A Yes.

11 Q And do you recognize that?

12 A Yes.

13 Q What is that?

14 A That's my evaluations from December 15th, 2010.

15 Q And by the way, at the bottom right corner of that
16 document, as there was on CP-1, it looks like some initials.

17 A Uh-huh.

18 Q Do you recognize those initials?

19 A It looks like three of them on there.

20 Q Okay. The bottom right, the bottom corner right.

21 A The BM one?

22 Q Yes.

23 A That's me.

24 Q Okay. And what, did you initial when you got your
25 evaluation?

1 Q Okay, finally, Ms. Minor, if you would look at what I've
2 marked as, handed you this CP-3, Charging Party Exhibit No. 3.

3 A Uh-huh.

4 Q All right, just moving right along, was this an evaluation
5 you received?

6 A Yes.

7 Q And did you receive it on or about June 1 of 09?

8 A Yes.

9 Q So that would be about one year into your tenure?

10 A Uh-huh.

11 Q And by the way then, was CP-2, which is about a year and
12 six months later, was that, was CP-2 the next evaluation you
13 received?

14 A After the CP-3, yes.

15 Q Okay. And then, and then, General Counsel 146 was the
16 final one you received, right?

17 A Yes.

18 Q And these three then, was there, were there any other
19 evaluations or was this all of them?

20 A It's all of them that I've gotten.

21 Q Okay. Okay, same questions at the bottom of CP-3, there
22 is an "A" and then BM, are those your initials for part of your
23 Affidavit?

24 A Yes.

25 Q And do you recognize the signatures, what I'm calling as

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1 Q And how frequently would you attend that?

2 A Well, when I became head of household, I did it every
3 Tuesday, unless I was sick or on vacation.

4 Q All right. So for a year and a half, you did it
5 approximately every Tuesday?

6 A Yes.

7 Q And who was in these meetings?

8 A Well there was Patty, the counselor and it depends on
9 which meeting I went to, if I went to the female one there
10 would be four residents. If I went to the male one, there was
11 six residents and then each of their head of households or if
12 the head of household couldn't go, they appointed another
13 caregiver to go.

14 Q Do you know what kind of counselor Patty Crockett is?

15 A State appointed, I think.

16 Q Do you know what her background or credentials are?

17 A I can't, I can't remember.

18 Q Did you ever know?

19 A She's gave me her business card that has all the initials
20 they use on there, but --

21 Q But what?

22 A I don't know what they are.

23 Q Okay. Do you have any idea of how management learned that
24 a Christmas party was not going to be held?

25 A Through the clients asking Patty, even though I --

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1 Q Are you guessing or do you know?

2 A It was learned through Patty, I'm assuming, because the
3 fire fired up the counseling.

4 Q Okay. The assuming is you don't know. Assuming means
5 you're guessing, doesn't it?

6 MR. FIOL: Your Honor, I mean, this is argumentative.

7 Objection.

8 JUDGE POLLACK: Overruled.

9 Q You just said you assumed. That means you're guessing,
10 doesn't it?

11 A It was brought up in counseling that I was there.

12 Q All right. Then why didn't you just say that? That it
13 came up in a counseling session and when you were there?

14 A Yeah.

15 Q All right, so, so the clients brought it up in a
16 counseling session, correct?

17 A Uh-huh.

18 Q Is that a yes?

19 A Yes.

20 Q I'm sorry, you have to say yes or no so we can get it on
21 the record clearly, okay?

22 A Understood.

23 Q So it was brought up in a counseling session with the
24 counselor Patty Crockett, correct?

25 A Yes.

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1 Q And the counselors, the clients, the CP clients expressed
2 their concern or disappointment that a Christmas party had been
3 cancelled?

4 A Yes.

5 Q And as a result of them expressing those concerns, do you
6 know whether Patty passed that on to management?

7 A I'm assuming --

8 Q You don't know?

9 A No.

10 JUDGE POLLACK: I take it Patty is a state employee not an
11 employee of Respondent.

12 MR. LOFLAND: She is not an employee of the Respondent.
13 She's contracted to the state.

14 JUDGE POLLACK: Okay.

15 MR. LOFLAND: We'll provide testimony later that, that
16 identifies who she is and what she does.

17 JUDGE POLLACK: Okay. Thank you.

18 Q Are you aware of any rule, whether it is a Department of
19 Social and Health Services rule or a company rule, that
20 prohibits you, you employees from, from taking things from
21 clients?

22 A I don't get what you're trying to mean.

23 Q Is there a rule, whether through the State of Washington
24 or through the company, that prohibits employees from accepting
25 gifts or taking matters, taking goods, food, from a client?

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1 A I found that out after I was set up that we couldn't share
2 food with the clients.

3 Q Did, when, at the time you were employed, did you receive
4 a copy of the manuals that the company had?

5 A Yes.

6 Q And did you read them?

7 A Yes, but they are so large, like I could remember all of
8 it.

9 Q Was there a, were you informed in November of 2011 that
10 you could not share food with the company?

11 A Yes.

12 Q Not share food --

13 A Well, I know what you meant.

14 Q Not share the clients' food?

15 A Yes.

16 Q Excuse me, I misspoke, I'm sorry.

17 A The meeting that you talked about with Alan Frey, that
18 occurred on September 7th, that you said lasted seven minutes,
19 or 30 minutes.

20 A Uh-huh.

21 Q Is there anything else you can tell me about the meeting,
22 what was said other than what you've told us today?

23 A That was pretty much what was said. It just, in more
24 broad, explaining everything, more details.

25 Q And what, so does, tell me again what you were saying that

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1 when you reset the Christmas party, only some of the clients
2 were willing or going to participate in the gift exchange?

3 A The ones that wanted to.

4 Q The ones that wanted to.

5 A They'd put their name in the drawing.

6 Q And then what about the others who, who weren't going to
7 participate in the gift exchange. Was, were they going to go
8 to the same party?

9 A Well, they could go, but they just wouldn't have a gift to
10 exchange because they chose not to be in the gift exchange.

11 Q And is that, was that, in your mind, appropriate and
12 proper?

13 A Well, it's their choice to put their name in a gift
14 exchange. If they didn't want to spend money on a gift...

15 Q Do you have the documents in front of you that you've been
16 shown earlier?

17 A Yes.

18 Q Look at that marked CP-1, which is the letter of
19 termination.

20 A Yes.

21 Q After you received this letter, did you, I believe your
22 testimony was you didn't understand what was meant by the
23 language? What you had supposedly had done?

24 A I didn't know what the two, the two, "poor attitude," or
25 "two other occasions you've shown poor attitude and the

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1 judgment crossing professional boundaries."

2 Q All right. And did you understand what misrepresenting
3 information in regard to a client was? That follows that
4 sentence?

5 A Yes.

6 Q Did you understand what that was?

7 A Well, I assume it was the, about the client thing and then
8 the party and they didn't understand.

9 Q And did you understand what causing distress to the
10 clients you serve was?

11 A That was, I'm assuming, because the phone call that Alan
12 called me on that morning on the 7th and I was in front of the
13 clients and I couldn't move because it was a corded phone.

14 Q Was it a portable phone?

15 A No, it was corded.

16 Q Corded?

17 A There was a cord to it.

18 Q It wasn't portable, you couldn't have moved?

19 A No, I couldn't move unless I took the whole wall with me.

20 Q After you received this letter, if you didn't know what
21 the reasons were, did you ever call Mr. Fry and talk to him or,
22 about the reasons?

23 A I didn't call because I didn't, I was under distress, I
24 didn't want to bring it up. I was sad and very mad at the same
25 time, so I didn't want to inappropriately say something that I

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1 didn't want to say.

2 Q Okay. And, and during the meeting at the company's
3 headquarters, where they had the consultant in.

4 A Uh-huh.

5 Q Jeff Jack Hopkins spoke up.

6 A Uh-huh.

7 Q And said he supportive the Union.

8 A Uh-huh.

9 Q Is that a yes?

10 A Yes.

11 Q Okay.

12 A Sorry. I automatically --

13 Q No, that's, well, we do that in normal conversation, so --

14 A I know.

15 Q -- I'm not picking on you, if I try to get you to answer.

16 A I understand.

17 Q Okay? So we'll work through this.

18 A Yeah.

19 Q Jack Hopkins indicated he was supportive of the Union?

20 A Yes.

21 Q And you spoke up?

22 A Uh-huh.

23 Q Is that a yes?

24 A Yes.

25 Q Okay.

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1 A Sorry.

2 Q And you'd just asked the consultant how much he was paid?

3 A Yes.

4 Q And he said, "I'm not going to tell you."

5 A It was none of my business.

6 Q That's the words he used?

7 A I believe so.

8 Q Ms. Minor, I'm going to hand you the statement that you
9 gave to the NLRB which is dated, bear with me while I find it.

10 A It's way long, that's all I remember.

11 Q It appears to be dated --

12 MR. FIOL: Wait, excuse me, may I ask why he's showing the
13 client the, the witness the Affidavit, just, I have it here.

14 MR. LOFLAND: We normally do that to, when you're going to
15 impeach the witness --

16 MR. FIOL: Right.

17 MR. LOFLAND: -- as to a statement.

18 JUDGE POLLACK: Go ahead.

19 MR. FIOL: Can you tell us --

20 JUDGE POLLACK: He'll point out what he's going to have
21 her look at. First, right now, he wants to just establish the
22 date of the statement. Go ahead.

23 Q And I'll give you a chance to look at this for a moment,
24 but do you remember signing the statement or providing the
25 statement to the NLRB?

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- 1 A Uh-huh.
- 2 Q All right. Is that a yes?
- 3 A Yes.
- 4 Q Okay. And is this, is that your signature?
- 5 A Yes.
- 6 Q All right. And I'll give you a chance to look at that
- 7 again when time allows, but when you do finally, if you would,
- 8 turn back to page five, okay?
- 9 A Okay.
- 10 MR. JENSEN: Page what Gary?
- 11 MR. LOFLAND: Five.
- 12 Q Tell me when you are there and I'll point you to the
- 13 lines. I don't want, I don't want you to spend the time
- 14 reading the whole thing unless you want to.
- 15 A I'm on page five.
- 16 Q Okay. If you would look at about 19 through 21 and read
- 17 that, please.
- 18 A Do you want me to read it out loud?
- 19 Q No, to yourself.
- 20 A Okay.
- 21 Q To yourself, please. Have you had a chance to read that?
- 22 A Yes.
- 23 Q All right. Now does that refresh your memory as to
- 24 anything else that Jack said during the meeting?
- 25 A That he, that he asked a question.

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1 Q Yeah, it says, "Jack, another employee, spoke up in favor
2 of the Union."

3 A Uh-huh.

4 Q Now it says, "He said that he was one of the people who
5 started the process," meaning the Union process?

6 A Yes.

7 Q And do you remember him saying that in the meeting?

8 A Yes.

9 Q Okay. In the Affidavit that you gave --

10 A Uh-huh.

11 Q -- looking at 20 through 25, did you, have you read that?

12 A Yes.

13 Q Is there anywhere in that that the person conducting the
14 meeting told you it was none of your business?

15 A Well, in this, I wrote that he's, where is it. "He
16 answered that he was getting paid and that is all I need to
17 know."

18 Q All right. But it didn't say in the Affidavit that he
19 told you it was none of your business?

20 A So it's slightly different. I understand that. I can't
21 exactly remember this thing, it was written quite a long time
22 ago. No one is perfect to remember everything.

23 Q Okay. So the testimony that he said that it is none of
24 your business, that you gave on direct examination, probably
25 wasn't correct, was it?

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1 A Well, we could go off with, I was --

2 MR. FIOL: Your Honor, it's argumentative. It is what it
3 is. I mean, was it correct or not. I object.

4 JUDGE POLLACK: All right. The statement will stand.

5 MR. LOFLAND: I'm having trouble --

6 JUDGE POLLACK: The statement will stand. Her prior
7 testimony is in the record and now this --

8 MR. LOFLAND: Right, and I'm just --

9 JUDGE POLLACK: -- line of questioning isn't --

10 Q And so my question was that your statement that he said
11 that it was none of your business was probably incorrect,
12 wasn't it?

13 MR. FIOL: And my objection to the question --

14 JUDGE POLLACK: Oh, okay, overruled.

15 A They are kind of the same thing in my opinion, but that's
16 my opinion. If you want to change it, you could change it to
17 what it says on the Affidavit.

18 Q Okay.

19 A That he's getting paid --

20 Q So is that, is that an acknowledgment that your testimony
21 was incorrect?

22 A Yes.

23 Q All right. Now at KTSS, as of December of 2011, there had
24 been a lot of terminations at KTSS, hadn't there?

25 A As far as I know, but I was the first one.

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1 A Don't remember.

2 Q All right. Do you know what triangulation is important in
3 dealing with clients?

4 MR. FIOL: Objection. That's argumentative. She can't
5 know if she doesn't know what the term means, her own words.

6 JUDGE POLLACK: I'll sustain the objection.

7 MR. LOFLAND: Judge, that's all I have.

8 JUDGE POLLACK: Okay. Is there any redirect?

9 MR. FIOL: Yes, Your Honor.

10 MR. LOFLAND: The Affidavit is with the witness so let me
11 grab that and return it.

12 JUDGE POLLACK: Sure.

13 MR. LOFLAND: He gets it back.

14 THE WITNESS: Oh, that's fine, I have the original.

15 MR. FIOL: Thank you.

16 **REDIRECT EXAMINATION**

17 Q BY MR. FIOL: I just have a few questions. Ms. Minor, you
18 were asked about a rule that you cannot accept food from
19 clients, correct?

20 A Uh-huh.

21 Q Outside of the Christmas and Thanksgiving parties, did you
22 ever attend any other parties that were put on by KTSS?

23 A Yes.

24 Q And can you tell us how many?

25 A There was the annual picnic at the park.

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- 1 Q And when essentially did the picnic take place?
- 2 A In the summertime.
- 3 Q Okay. And you attended?
- 4 A Yes.
- 5 Q And who else, who attends this party?
- 6 A Clients, staff --
- 7 Q The picnic?
- 8 A -- family members, they were all invited.
- 9 Q And besides staff and family members, did members of
- 10 management attend this picnic?
- 11 A Yes.
- 12 Q Okay. Do you remember the members of management who
- 13 attended this picnic?
- 14 A Usually all of them went.
- 15 Q When you say all of them, can you give some names?
- 16 A Alan, Kathy --
- 17 Q Alan Frey?
- 18 A Yeah.
- 19 Q And Kathy?
- 20 A Kathy Grice.
- 21 Q Grice?
- 22 A Dawn, Mieke.
- 23 Q And is food at this particular picnic?
- 24 A Yes.
- 25 Q Okay. Can you describe to us what you saw in terms of

1 eating food?

2 A The company would barbeque hamburgers and hot dogs on the
3 grills and then there was the side dishes that were contributed
4 by staff and clients and some, the office people.

5 Q Okay. And how was, did this food, were people allowed to
6 share this food?

7 A Yes.

8 Q And who shared this food?

9 A Everybody. It's kind of like a potluck.

10 Q Everyone ate?

11 A Uh-huh.

12 Q Did members of management eat this food?

13 A Yes.

14 Q Did you see them? Did you, yourself, eat?

15 A Yes.

16 Q Okay. How about the clients themselves?

17 A Yes.

18 Q Okay. Now you were asked questions about this document,
19 this termination notice?

20 A Uh-huh.

21 Q About misrepresenting information.

22 A Uh-huh.

23 Q Okay. And I believe your earlier testimony was you never
24 found out what misrepresenting information meant, correct?

25 A Yeah.

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1 Q Okay. And how about causing distress, did anyone ever
2 tell you what causing distress was?

3 A Not explained it, but I assumed it was when I was on the
4 phone with Alan.

5 Q Bud did anyone, did Alan tell you, causing distress?

6 A No.

7 Q Okay.

8 MR. FIOL: I have nothing further, Your Honor.

9 MR. JENSEN: I have a few.

10 **REDIRECT EXAMINATION**

11 Q BY MR. JENSEN: Going back, Ms. Minor, to the counselor
12 and people, clients apparently complaining about not having a
13 Christmas party. You said that you were aware that some
14 clients complained, correct?

15 A Uh-huh.

16 Q And was it your testimony you learned that firsthand by
17 sitting in counseling sessions or did you learn through some
18 other source?

19 A Well, in the counseling session.

20 Q Okay. And how many people were complaining?

21 A There was at least two clients.

22 Q And you were asked if you were aware of a company rule
23 against sharing food. Do you remember that?

24 A Yes.

25 Q And you said that you'd read that, you asked if you'd read

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1 front --

2 A Uh-huh.

3 Q -- of you, Ms. Minor?

4 A And, okay. And I understand your testimony from Mr. Fiol,
5 you don't know to this date what was meant by misrepresenting
6 information, is that correct?

7 A Yeah.

8 Q Okay. Causing staff distress, now you said you thought
9 that had to do with Alan's phone call to you, correct?

10 A Yes.

11 Q Explain that scenario, tell, set the, where were you, what
12 time was this, how did you get this phone call, and let's take
13 it from there?

14 A Well, we have the dining room table and we were just
15 having breakfast and taking medicines and I was sitting there
16 with them and to make sure they take their pills and the phone
17 -- the table is right here, there's like a little pedestal
18 right behind me, and that's where the phone was. So it rung --

19 Q Whose phone was that?

20 A The clients' phone.

21 Q Okay. Do you have your own phone that Mr. Frey could --

22 A I always have my cell phone.

23 MR. LOFLAND: Your Honor, with due respect, I believe this
24 is beyond the scope of redirect examination and we're simply
25 not dealing with new matters brought up on cross, but we're

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1 simply reiterating that which was already developed during
2 direct.

3 MR. JENSEN: Well, I disagree. He brought this up about
4 this --

5 JUDGE POLLACK: All right, go ahead.

6 MR. JENSEN: Okay. Thank you.

7 Q All right, so the phone rang on the clients' phone --

8 A Yes.

9 Q -- and who answered the phone?

10 A I was sitting right there so I answered it.

11 Q Okay. And then what happened?

12 A I talked to Alan.

13 Q Okay.

14 A In front of the clients, because I couldn't, it's a corded
15 phone.

16 Q Okay. So why do you think there may have been some client
17 distress involved?

18 A Because they could hear my side of the conversation and
19 they were --

20 Q And what about your side of the conversation you thought
21 might lead to stress?

22 A Because I was getting upset.

23 Q What, upset with what?

24 A With Alan, the way he was talking to me.

25 Q How was he talking to you?

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1 A Very --

2 MR. LOFLAND: I renew my, I renew my objection, Judge.

3 This is --

4 JUDGE POLLACK: You, you'll get a chance to question here
5 about it. Go ahead.

6 A He was talking to me, in my opinion, very sternly.

7 Q Okay. Anything else? And so your reaction to that is
8 what you assume might have generated his concern about client
9 distress?

10 A I'm assuming.

11 Q Okay. Nobody ever told you that?

12 A No.

13 Q Nobody ever told you what he meant by that?

14 A No.

15 Q Nobody ever told you what he meant by any of these things
16 except that you didn't follow supposedly party protocol?

17 A Right.

18 Q You were asked by Mr. Lofland in cross-examination, about
19 your Affidavit where you had made the remark that you thought
20 there was a lot of turnover at the Employer's facility.

21 A Uh-huh.

22 Q Okay. And is high turnover a standard in that industry?

23 A Yeah.

24 Q And when you say turnover, are you including employees who
25 leave on their volition?

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1 A Yeah.

2 Q Okay. And do you know how many people leave on their own
3 volition versus how many are terminated by the company?

4 A No.

5 Q And when you said you thought there were a lot of
6 terminations, what is the source and basis of your specific
7 knowledge there, if any? Any basis that you can base that on,
8 any factual basis?

9 A No.

10 Q Why do you think you said that?

11 MR. LOFLAND: Objection. Calls for speculation.

12 JUDGE POLLACK: Sustained.

13 Q Ms. Minor, I'm going to hand you again your Affidavit that
14 Mr. Lofland asked you about. I'm turning to page five and we
15 direct your attention to line 20 and 21. Excuse me, let me
16 direct your attention to line 21 through 24 and I'd ask you to
17 read that and look up when you're done. Okay, on line 21, the
18 conversation about you starts with, it says "rated," obviously
19 is a typo, "my hand," correct?

20 A Yeah.

21 Q Okay. Would you read those two or three lines through the
22 start of 24 and tell us exactly what you did say in that
23 Affidavit?

24 A It says, "I raised my hand and asked Paul how much he was
25 making to run this meeting. He answered that he is not, that

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1 he is getting paid and that's all I need to know. I might have
2 said something in response, like whatever, but I didn't not
3 recall saying anything else."

4 Q Okay. Thank you.

5 MR. JENSEN: Nothing further.

6 **RECROSS-EXAMINATION**

7 Q BY MR. LOFLAND: Are you aware that at functions like the
8 Christmas party, the barbeque, the summer barbeque, that Mike
9 Closser pays the cost of all the food that's consumed?

10 A He pays for the Christmas party.

11 Q He pays for the Christmas party, he pays for the food
12 that's consumed at the summer picnic.

13 A He pays for the hamburgers and the hot dogs.

14 Q And the drinks.

15 A I don't know about the drinks, but I know the side dishes
16 the clients bring.

17 Q Do you, do you know what he pays, do you know what he pays
18 for?

19 A The hamburgers, the hotdogs and you said drinks.

20 Q At the, at the, on your testimony going back to the
21 meeting that occurred with the consultant, where your raised
22 your hand and you asked about how much he was paid, I believe
23 your testimony on direct was that you spoke up --

24 MR. FIOL: Your Honor, objection. This is just now
25 clearly outside the scope of redirect.

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1 JUDGE POLLACK: Not yet it isn't.

2 MR. FIOL: Okay, I don't know, nothing was raised about
3 the meeting with the consultant.

4 MR. LOFLAND: Mr. Jensen just went over --

5 JUDGE POLLACK: Mr. Jensen just had her read from the
6 Affidavit regarding that. Go ahead.

7 MR. LOFLAND: Let me go back --

8 JUDGE POLLACK: Okay.

9 MR. LOFLAND: -- and try again.

10 Q Again, we're gonna focus on the meeting with the
11 consultant.

12 A Okay.

13 Q And that's the meeting where you raised your hand and
14 asked him if he was being paid.

15 A Uh-huh.

16 Q Jack Hopkins spoke up?

17 A Uh-huh.

18 Q Yes?

19 A Yes.

20 Q Okay. And you spoke up?

21 A Yes.

22 Q And in your testimony, in your direct, you said another
23 person spoke up?

24 A Yes.

25 Q Is that correct?

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1 A Yes.

2 Q And who was that person? Johnnie Driskell?

3 A Yes.

4 Q Okay. Do you have the Affidavit in front of you?

5 A No, I gave it back.

6 MR. LOFLAND: Let me, let's give it back.

7 Q Go back to five.

8 A Okay.

9 Q And I'll give you plenty of time to look at it.

10 A Okay.

11 Q So bear with me. Let me point to you, let me figure out
12 where we are. Twenty-five, twenty, excuse me, page five, line
13 25 and page six, I'm having trouble. It looks like one, one,
14 would you look at those. I think it's the first line, it's the
15 top one.

16 MR. JENSEN: It is.

17 A Okay.

18 Q Okay. So if you would look at those two. Have you had a
19 chance to read that?

20 A Yes.

21 Q All right. And that Affidavit says, "The only other
22 person who spoke up at the meeting was an older woman who was
23 against the Union. I don't know who she was." Is that
24 correct?

25 A Yes, I totally forgot about that.

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1 Q All right. And nowhere in this Affidavit does it mention
2 that Johnnie Driskell spoke up in the, in that meeting, does
3 it?

4 A No.

5 Q Thank you.

6 MR. LOFLAND: Nothing further.

7 JUDGE POLLACK: Okay. That's all. Thank you.

8 MR. FIOL: Well, Your Honor, could I just follow-up with
9 one more question?

10 JUDGE POLLACK: You've had two chances --

11 MR. FIOL: Well, I didn't think, this is completely, you
12 know --

13 JUDGE POLLACK: All right. Go ahead. Go ahead.

14 MR. FIOL: Okay, thank you, Your Honor.

15 **REDIRECT EXAMINATION**

16 Q BY MR. FIOL: Testifying today, who do you remember
17 speaking at that meeting?

18 A Testifying today, I don't remember --

19 Q At the meeting with the consultant?

20 A I remember Jack, myself and Johnnie and the lady.

21 Q Thank you.

22 MR. FIOL: No further questions.

23 **RECROSS-EXAMINATION**

24 Q BY MR. LOFLAND: Is your memory today better than it was
25 in February of 2012?

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1 Q Did you testify?

2 A Yes.

3 Q Who called you to testify?

4 A If I remember right, it was the Union lawyer at the time.

5 Q And when you testified, who was in, who was in the room,
6 in the hearing room when you testified?

7 A There was about fifteen of the staff, the Union was there
8 and Mike Closser was there, Alan Frey was there, the lawyer was
9 there and that's all I can remember.

10 Q Okay. Now shortly after this Board hearing that you went
11 to, did something happen to Ms. Winters, who was the head of
12 household?

13 A Yes.

14 Q What happened to her?

15 A She called me and said that --

16 MR. LOFLAND: Objection.

17 MR. FIOL: Well, it just goes to state of mind. It's not
18 anything...

19 MR. LOFLAND: Again, he's trying --

20 MR. FIOL: If he has knowledge of what happened, that's
21 all.

22 MR. LOFLAND: He's asking to like, a witness to testify as
23 to what the head of household said.

24 MR. FIOL: No, I'm asking what happened to the head of
25 household.

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1 MR. LOFLAND: And the witness just --

2 MR. FIOL: Asked the question.

3 JUDGE POLLACK: Okay. Let's get the -- repeat the
4 question.

5 Q To your knowledge, to your knowledge, what happened to the
6 head of household?

7 A She resigned.

8 Q All right. Now when she resigned, what happened to that
9 position?

10 A It was given to Andy, I can't remember his last name,
11 temporarily until a new one was found.

12 Q Now, up until she was resigned, your testimony was that
13 the office people had not come there on a regular basis,
14 correct?

15 A No, not on my shift.

16 Q Okay. So what happened after she resigned?

17 A Then they started coming over.

18 Q Who started coming?

19 A Kimberly came over more.

20 Q Kimberly Krusi?

21 A Yes.

22 Q How often did she start coming?

23 A I think I saw her four times.

24 Q After when?

25 A After Ms. Winters left.

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1 Q Do you recall approximately when Ms. Winters left?

2 A About the 22nd, I think.

3 Q Of what month?

4 A Of January.

5 Q How about Mr. who else started showing up after Ms.

6 Winters left?

7 A Alan came over, Kimberly, of course, Mieke came over more.

8 There was some other lady that showed up and I can't remember

9 her name, I'm sorry.

10 Q Do you remember a meeting that you had with Mr. Frey
11 sometime in January, right about the time that Ms. Winters
12 left?

13 A Yes.

14 Q Let's go back to that. How did you, why, where did you
15 meet with Mr. Frey?

16 A I met with him in the other conference room.

17 Q And where is that at?

18 A That's at KTSS.

19 Q Okay. And was anyone else there?

20 A Yes, the whole, the whole house was there, staff from
21 house.

22 Q Okay. Now, what time of day was that meeting held?

23 A About one-thirty, two o'clock.

24 Q Okay. What was the purpose of that meeting, as you
25 recall?

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1 Q Okay. And what, what was her position at the time?

2 A She was the QA person, I think.

3 Q You said that these people started, you named some of the
4 managers coming to the offices, to your home, Hefner House,
5 starting around December and, I don't know, you said year 2011,
6 correct?

7 A Right.

8 Q And into January?

9 A Yes.

10 Q Did they stop after January?

11 A No, they came in in February also.

12 Q Okay. Prior to December, had anybody been coming to check
13 on the house?

14 A They did sometimes during the day, but never when I was
15 working.

16 Q Okay. And when you say they, who was doing that?

17 A Mieke, Alan, other people from the --

18 Q And when you say, I'm sorry, I cut you off.

19 A Other people from the office.

20 Q Okay. And when you say that, you weren't there, so --

21 A It was during the day before three o'clock.

22 Q But, I mean, you didn't witness it, you --

23 A No.

24 Q -- were just told it happened?

25 A Told it's happened, yes.

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1 clients.

2 Q And did that remain the same until you stopped working
3 there?

4 A No, because I got moved to a two, moved down to one client
5 again and then two clients.

6 Q So let me ask you some questions now about events that
7 took place in 2011 and you can recall.

8 A Okay.

9 Q Were you aware of a Union campaign that was going on for
10 the employees at KTSS?

11 A Yes, I do.

12 Q Okay. Can you tell us how you knew about this?

13 A How I knew about this?

14 Q About this Union, I'm sorry, about this Union campaign?

15 A I'm the one that initiated, got it started.

16 Q Can you tell us what you did?

17 A When I got demoted, I got, was down to one client and I
18 started talking to the other staff and asking them about, you
19 know, what was going on within the agency, telling them that we
20 had got our wages frozen, that we had a vacation taken away, we
21 got some of our sick leave, we never had any sick leave. And
22 they had put the pay period back to the 10th.

23 Q Who did you say this to?

24 A My other co-workers.

25 Q I see.

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1 A Other co-workers.

2 Q And when was this?

3 A Let's see, 2011 of that year, I think, maybe, 2011, 2010,
4 one of them.

5 Q Now say 2011, do you recall contacting --

6 MR. LOFLAND: No, wait, wait, let's not say 2011. Let's
7 let the witness testify rather than Counsel.

8 Q What, can you just tell us what year it was that you
9 contacted the Union?

10 A It was 2011.

11 Q Okay.

12 A 2011.

13 Q Now who did you contact?

14 A Well I was at a friend of mine's, I was at his sister's
15 memorial, well, her funeral and I saw, I saw him and asked him
16 was he still involved in the union, because I used to work for
17 the state which is another agency. And I asked him, was he
18 still involved and he said, "Yes" and I asked him, did he have
19 a card and he said, "Yes, it's in the car." I said, "Well,
20 finish doing what you're doing," you know, "I know you're
21 meeting there right now and finish what you're eating, before
22 you leave, can you give me your kind?" And that lasted for
23 maybe 30 minutes, 45 minutes or whatever, so he came up to me
24 and patted me on the shoulder and gave me his card. And I
25 says, "Oh, thank you, I'm gonna really call this." That was on

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1 a Friday, I think, Friday or a Saturday, and I called him that
2 Monday.

3 Q Now beyond that, did you contact anybody else in this
4 union to get this thing going?

5 A Beyond that?

6 Q Right, beyond this conversation with this gentleman?

7 A The, the, Tim Tharp got in touch with me.

8 Q Tim Tharp?

9 A Uh-huh.

10 Q Okay. So after he got in touch with you, what happened
11 next with this union thing?

12 A This union we, I first met him in Bremerton, we talked and
13 I told him about the other staff that also wanted to get
14 involved and he said, would, do you think they would be
15 willing, willing to meet and I said, "Yes, I'm sure, they
16 would." And he asked for their names and I said, "Well, why
17 don't we just set up a meeting and you can meet them." Now I
18 don't know was that maybe a week later or two weeks later, but
19 there were --

20 Q That's fine.

21 A -- at least four or five people that came and it grew from
22 there.

23 Q Are you familiar with a term, a union term called a
24 "Blitz?"

25 A Yes, I am.

1 Q And how were you familiar with this term?

2 A We did that with the union, that's when we go door-to-
3 door.

4 Q And did there come a time when you personally became
5 involved in a blitz?

6 A Yes.

7 Q Do you remember about when that happened?

8 A It happened in December.

9 Q Of what year?

10 A 2011.

11 Q Okay. Can you please tell us what your involvement was in
12 this blitz?

13 A We got together with the Union organizer peoples and it
14 was two peoples to a Union organizer, two peoples went to the
15 doors and with that two peoples, we covered almost all of the
16 peoples that was wanting to get involved in the Union,
17 including the CP peoples.

18 Q What did you personally do?

19 A I went door-to-door also.

20 Q And when you say, "Door-to-door," where exactly?

21 A To the staff houses, the staff houses.

22 Q To the staff houses?

23 A Uh-huh, staff houses.

24 Q What is that, to the employees' houses?

25 A Employees' houses, yes.

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1 Q I see.

2 A Yes, yes.

3 Q And did there ever come a time when you saw employees
4 maybe at a location other than their house?

5 A When they got off work, we met them like at Burger King or
6 Wendy's. Sometimes they had something to do when they got off
7 work and they wanted to stop in and have coffee or something
8 like that, so we told them, we could meet you, some of them got
9 off work at seven o'clock, some of them got off work at eight
10 o'clock and some of them was heading to other jobs, because,
11 not, a lot of our peoples had other jobs, second jobs.

12 Q I see. And do you recall what part of the week that blitz
13 took place?

14 A It was on that Friday night and it went into that
15 Saturday.

16 Q In the first week of December?

17 A Uh-huh, yes.

18 Q Now Ms. Driskell, did there come a time after that, that
19 you became involved with the Union as a member of the
20 bargaining committee?

21 A Yes.

22 Q Okay. Now can you tell us what happened? How that came
23 about?

24 A Oh, we was having a Union meeting and Tim explained to us
25 about how the bargaining union, how that, how the peoples was

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1 getting nominated and we kind of looked at each other and said,
2 "Well, I can nominate you, I can nominate you." I can't
3 remember who nominated.

4 Q Now, right, let me just put it in, I'm sorry.

5 A Okay.

6 Q Now the Union, by this time the Union's been an election
7 and the Union has won, that's as far as you know?

8 A Uh-huh.

9 Q And then the Union held meetings for members of the
10 bargaining committee?

11 A Uh-huh.

12 Q And did there come a time that when you got involved with
13 the bargaining committee?

14 A Yes.

15 Q And were you selected or elected by the --

16 A Elected.

17 Q Now I'm going to direct your attention, move forward a
18 little bit more in 2012 and we're gonna go to the first week of
19 June, 2012, specifically June 4th. Do you recall attending a
20 training for the people on the bargaining committee?

21 A Yes.

22 Q Okay. Now were you scheduled to work that day?

23 A Yes.

24 Q Okay. Now June 4th was a Monday, correct?

25 A Yes.

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1 Q What was your work schedule for that day?

2 A I was suppose to been at work at ten o'clock.

3 Q And what time were you supposed to finish work?

4 A Six.

5 Q Six p.m.?

6 A Yes.

7 Q Now, with regard to this training, what do you recall the
8 hours of this Union training being?

9 A That training would have started at ten-to-four, I think.

10 Q So how did you plan then to attend this training if you
11 was scheduled to work from ten-to-six?

12 A I had asked one of the ladies in my household, my staff,
13 to switch work, switch days with me. Well, switch, not days,
14 switch hours.

15 Q I see.

16 A Her hours were three-to-eleven.

17 Q Three p.m.?

18 A Yes. I asked her to come in and work eight-to-four.

19 Q Okay. Now was there anyone else besides, and what was
20 this person's name, by the way?

21 A Vicki Cary.

22 Q Was there anyone else scheduled to work that day on June
23 4th?

24 A That was an overlap also there.

25 Q An overlap was, what does that mean?

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1 away."

2 Q Okay. So what happened, did you, did she call you back
3 again?

4 A Yeah, she called me back again and she said --

5 Q That same day?

6 A That same day.

7 Q How much time elapsed from that first phone call to this,
8 the second phone call?

9 A About five, five or ten minutes because by this time I'm
10 thinking that maybe she discussing it with somebody else in the
11 office, trying to figure out where was this right here at, you
12 know, so she called me back and she says, "Johnnie, in the
13 future when you want a day off or when you want to plan
14 something or switch, would you clear it with me first?" I
15 said, "Kathy, I did clear it with you." I said, "We have
16 talked on the phone and played phone tags like that many times
17 in the past," and she said, "Well just from now on, we can talk
18 face-to-face." I says, "Okay, not a problem." I said, "Kathy,
19 what's the big deal?" And she says, "Well you caused another
20 employee to go into an hour overtime."

21 Q Which employee, did she say which employee?

22 A I asked, I said, "Which employee," and she said, "Your
23 overlap." I says, "I didn't cause her to go into overlap," I
24 mean, "I didn't cause her to go into overtime. You guys called
25 Vicki to the office and she was supposed to still be there. I

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DIRECT EXAMINATION

1

2 Q BY MR. JENSEN: Ms. Driskell, good afternoon. I
3 introduced myself to you earlier.

4 A Yes.

5 Q My name is Terry Jensen, Union Counsel and before you
6 walked into the hearing room, we've never met or spoken, have
7 we?

8 A No.

9 Q Or communicated in any way, have we?

10 A No.

11 Q Okay. You talked about how you got going with the Union
12 campaign, I guess it was late 2011, am I correct here?

13 A Yes.

14 Q Okay. And you talked about Tim Tharp called you. How,
15 you had, got a card from somebody --

16 A Uh-huh.

17 Q -- and you placed a call to that person?

18 A Yes.

19 Q And then this Tim Tharp, who responded on that person's
20 behalf, is that --

21 A Yes, uh-huh.

22 Q And then you talked about the blitz and you said you went
23 to people's homes on that weekend. You're talking about the
24 staff, you went to their personal homes, is that right?

25 A Yes.

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- 1 Q How many homes did you go to?
- 2 A Wow, almost all of them that we could find and then some.
- 3 Q Could you give me an estimate? Are we talking about
- 4 twenty or ten or four?
- 5 A Oh, no, about seventy-five percent, yeah.
- 6 Q Okay. Seventy-five percent, did you say?
- 7 A Uh-huh. I said about seventy-five people, yeah.
- 8 Q Seventy-five people?
- 9 A Uh-huh.
- 10 Q Okay.
- 11 A Yeah.
- 12 Q And then were you accompanied when you did that? Were you
- 13 alone or accompanied by a Union official?
- 14 A Accompanied by Union official.
- 15 Q Okay. And it was the same person or different?
- 16 A Same person, because we get matched up.
- 17 Q Okay. Okay. And who was that person?
- 18 A Her name was Venessa.
- 19 Q Okay. Now you said you served on the bargaining committee
- 20 and you were elected to do that.
- 21 A Uh-huh.
- 22 Q Who elected you?
- 23 A Who put my name in.
- 24 Q Go ahead, I'm looking for --
- 25 A Okay. Somebody put in my name. I can't remember who it

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- 1 was. I believe I want to say Gary.
- 2 Q Okay. Gary Martell?
- 3 A Yes.
- 4 Q Now you talking about a nomination there?
- 5 A Yes.
- 6 Q Okay. And then, then what body elected you, if you will?
- 7 A There was no, the, I think the Union, which is Tim and
- 8 Sarah.
- 9 Q So they appointed you, if you will, after a nomination?
- 10 A Uh-huh.
- 11 Q As opposed to an employee vote of all employees?
- 12 A Right.
- 13 Q Okay. Now, so that was to be on the bargaining committee?
- 14 A Bargaining committee, yes.
- 15 Q Or a negotiating committee?
- 16 A Negotiation committee, yes.
- 17 Q Okay. Who all was on that committee that you can recall?
- 18 A Who all was on that committee to do the electing thing?
- 19 Q Yeah, who, who, who was --
- 20 A Oh, who all was on that --
- 21 Q Who was the Union's negotiating team.
- 22 A Negotiating team?
- 23 Q In terms of employees?
- 24 A Myself.
- 25 Q Uh-huh.

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1 for them to perform in the talent show and so have other staff.

2 Q And you're buying on behalf of KTSS?

3 A Yes.

4 Q Had you gone, in your years there at the KTSS, had you
5 gone to the various holiday parties and summer picnics, etc.,
6 etc.?

7 A Yes, I have.

8 Q Okay. And did you notice whether or not staff and or
9 managers and clients were all sharing from the same food?

10 A Yes.

11 Q And were they?

12 A They were.

13 Q There wasn't a separate table that said this is for
14 clients only?

15 A No, no.

16 Q And prior to July of 2012, did anybody ever talk to you
17 about buying props and being reimbursed or anything like that,
18 criticizing you for that?

19 A No. Matter of fact, I got applauded for it. I was, I
20 got, saying I had been doing a good job with the clients.

21 Q Who said that?

22 A Alan Frey and Mike Closser.

23 Q In what context?

24 A The last picnic that I was at, Mike Closser pulled me to
25 the side and told me that I was doing a good job with client.

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1 A Yes, and that, to me, that was more like a, letting you
2 know that this job, I know you're new at this, and you need to
3 get yourself together. It was like a 90 day's probation. And
4 then when I went back in to talk to her and say my 90 days is
5 up now, how do my paperwork look, am I, am I okay? "Oh, you're
6 90 days is up?" But this formal, all these formal write ups
7 right here, I've never gotten one of these before.

8 MR. JENSEN: I have nothing further of Ms. Driskell.

9 MR. LOFLAND: Affidavit?

10 MR. FIOL: I have a five-page Affidavit and some
11 attachments to that (voice drifting, inaudible).

12 JUDGE POLLACK: Off the record, please.

13 [*Off the record*]

14 JUDGE POLLACK: Back on the record, please.

15 **CROSS-EXAMINATION**

16 Q BY MR. LOFLAND: Ms. Driskell, will you tell me what the
17 differences are between home care and tenant support, please?

18 A Home care and tenant support?

19 Q Yeah, what are the differences?

20 A Home care is the division where there, senior citizens as
21 in the community, like I say, they, you can have anywhere
22 between four clients or three clients, but it can still, it can
23 average out to one client with eight hours or three or four
24 clients with eight hours. The Kitsap Tenant Support part is
25 three or four programs. There is ITS, CP and Supportive

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1 Living.

2 Q Okay, and what are, are there differences between the
3 types of clients that are served between the two programs?

4 A The Supportive Living clients live in the community. They
5 have jobs. They work in the community. Some of the work, live
6 with each other. Sometime it can be two clients live in the
7 same household, sometime it might be three clients live in the
8 same household. The ITS Department, it can be three clients in
9 a household. They can be immobile or mobile. And those are
10 the only difference?

11 A Are you talking about the CP clients, also?

12 Q Yes.

13 A The CP clients is the, CP stands for community of
14 protection. As I understand it those clients is, that program
15 was implemented maybe in 1998 or something like that. Mr. Frey
16 implemented that program. And what that was is to give the
17 clients that was like in trouble or having problems in the
18 community, to keep them out of jail and he implemented that
19 program to put them in that program.

20 Q Okay. And what does the word habilitation mean?

21 A What does the word what?

22 Q Habilitation.

23 A Habilitation?

24 Q Yes.

25 A You mean habilitation or rehabilitation?

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1 Q No, habilitation.

2 A Habilitation? I have no idea.

3 Q The Union bargaining or negotiating committee, you listed

4 3, 4, 5 names. I don't need you to go through them again.

5 Were all of those people appointed by Tim and the other Union

6 representative?

7 A What do you mean appointed?

8 Q Tim said, "Your on the committee."

9 A Appointed? No, no.

10 Q Was there an election by the employees who were present at

11 the Union meeting? Where they voted on who would be in the

12 Union? Who would be on the committee?

13 A They voted on it?

14 Q Yes.

15 A It was peoples put up, well, I don't think it was no more

16 than maybe three names that was up there to be on the

17 committee. And the peoples that was on the committee, no, they

18 was not elected by Tim.

19 Q How many employee were in the committee, on that, in that

20 meeting?

21 A In that meeting? We had many meetings as far as employees

22 --

23 Q The meeting at which the negotiating team was selected.

24 That's the meeting. How many employees were in that meeting?

25 A At that time, I have no idea, you know, it could have been

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1 A So, dot your I's, cross your T's.

2 Q And did, and in meetings with the Union, did Tim or other
3 Union representatives say that you might get fired because of
4 Union activity?

5 A Yes, they did tell us that, yes.

6 Q Did he tell you that you had to do your job?

7 A We had, we knew we had to do our jobs.

8 Q No, I'm not asking you what you knew, I'm asked --

9 A Yes, --

10 Q -- you a specific --

11 A -- they did.

12 Q -- question whether --

13 A Yes.

14 Q -- Tim said that to you.

15 A Yes, continue to do our jobs.

16 Q Continue to do your job?

17 A Exactly, don't stop doing our jobs.

18 Q Did he tell you you could never be fired once you started
19 supporting the Union?

20 A No, no.

21 Q But he told you that the company would be looking for
22 reasons to let you go, to fire you, didn't he?

23 A He told us what?

24 Q Did he tell you that the company would be looking for
25 reasons to fire or terminate the Union supporters?

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1 A He told us that they will look for anything to fire us,
2 they will fire, they will write us up for anything, if we did
3 anything, they would look for any little thing out of the
4 ordinary, they would terminate us for anything.

5 Q And so the reason you put the written request in was to be
6 extra careful that you had the documentation and made sure you
7 would have the time off? Is that correct?

8 A That's correct.

9 Q And what you were doing is you wanted to be able to switch
10 so you could come in at four o'clock?

11 A Uh-huh.

12 Q Got to say yes or no.

13 A Yes, yes, yes.

14 Q Okay. Because the Union meeting lasted till how long?

15 A It was scheduled for ten-to-four, but it was over with
16 before four o'clock.

17 Q Okay. The Union meeting was scheduled ten-to-four --

18 A Uh-huh.

19 Q -- and it got over early?

20 A Got over a little bit early. Not way early. I don't know
21 exactly what time it got over with, but it was before four
22 o'clock, I think.

23 Q Okay. And you were careful as to the time that you wanted
24 to switch and you wanted to come in at four o'clock? That's
25 correct?

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BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 19

In the Matter of:

KITSAP TENANT SUPPORT SERVICES,
INC.,

Respondent,

and

WASHINGTON FEDERATION OF STATE
EMPLOYEES, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL 28, AFL-CIO,

Charging Party.

Case No. 19-CA-74715
19-CA-79006
19-CA-82869
19-CA-86006
19-CA-88935
19-CA-88938
19-CA-90108
19-CA-96118
19-CA-99659

The above-entitled matter came on for further hearing pursuant to adjournment, before **Jay Pollack, Administrative Law Judge**, at the National Labor Relations Board, Jackson Federal Building, 915 Second Avenue, Seattle, Washington 98174 on Wednesday, September 11, 2013.

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A P P E A R A N C E S**On Behalf of the Counsel for General Counsel:****RICHARD FIOL, ESQ.****ELIZABETH DeVLEMING, ESQ.**

NATIONAL LABOR RELATIONS BOARD - REGION 19

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Phone: (206) 467-6700

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1 Whereupon,

2 LISA HENNINGS

3 having been duly sworn, was called as a witness herein and was
4 examined and testified as follows:

5 JUDGE POLLACK: Please give us your name and address for
6 the record.

7 THE WITNESS: Lisa Hennings Lucas.

8 REPORTER: You're going to have to ask the witness to make
9 sure she keeps her voice up.

10 THE WITNESS: I'm sorry. Lisa Hennings Lucas. I live at
11 436 E. 6th Street, Port Angeles, Washington 98362.

12 JUDGE POLLACK: Thank you.

13 DIRECT EXAMINATION

14 Q BY MR. FIOL: Good morning, Ms. Hennings.

15 A Morning.

16 Q Ms. Hennings, are you currently employed?

17 A Yes.

18 Q And who is your employer?

19 A Kitsap Tenant Support Services.

20 Q How long have you worked for them?

21 A Since I think November 19th, 2009.

22 Q What was your position when you started with Kitsap Tenant
23 Support Services?

24 A When I went through the interview, I was hired as a direct
25 service staff.

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1 Q And what does a direct service staff employee do?

2 A We do the direct care with the clients.

3 Q Can you tell us what that is?

4 A Their hygiene, their meals, taking them places that they
5 need to go, you know, going along with them and assisting them
6 in shopping and that type of stuff.

7 Q What age group are the patients that you service?

8 A Well, I've worked with quite a few of them. So I think
9 the youngest one was maybe in his 30s and the oldest one 78, I
10 think.

11 Q Ms. Hennings, can you tell us how long you've worked in
12 the area of patient care?

13 A Off and on since, I don't know, since I was 18 off and on.
14 You know, you just pick up jobs here and there. Took it
15 seriously -- I'm trying to think of when my first real serious
16 job was. Maybe when I was -- when I was 20 I worked at Planned
17 Parenthood. About 20 hours at Planned Parenthood. I worked
18 with Wrights Home Health when I was in my 30s.

19 Q What is Wrights Home Care -- what type of --

20 A It's geriatric care.

21 Q Okay. What kind of patients or clients do you deal with?

22 A Usually patients that are -- they are -- it can be
23 anything. You know, it's whoever needs the service. Somebody
24 that's had a major injury and we would help with all their care
25 to get them healed, or geriatric that are end of life. It was

1 any kind of care.

2 Q Do you have any type of professional degree?

3 A Yes.

4 Q Can you tell us --

5 A I'm a medical assistant and I worked with Olympic Medical
6 Center.

7 Q What is a medical assistant?

8 A I work under the physician. I room patients, take their
9 vitals, give injections, do anything basically that the doctor
10 needs. I schedule all their appointments, schedule all the
11 tests, prepare patients for tests, assist in surgery.

12 JUDGE POLLACK: Excuse me, did you say assist in surgery?

13 THE WITNESS: Yeah, in sterile field surgery, yes. It was
14 minor surgery. It would be like if you came in for a vasectomy
15 I would assist, set up the sterile field. Of course, I picked
16 that one. I apologize.

17 Q BY MR. FIOL: In addition to this degree, do you hold any
18 licenses in this field?

19 A I have a NAR.

20 Q What's that?

21 A That's a nursing assistant.

22 Q That's a license?

23 A Yeah.

24 Q When did you get that?

25 A I got it when I started working with Kitsap Tenant Support

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1 Services. That was one of the stipulations. We had to get our
2 NAR license. And I do have a medical assistant license too.

3 Q Did there come a time after you started with Kitsap Tenant
4 Support Services that you received a promotion?

5 A Yes, about three months after I was working there.

6 Q Can you tell us about that promotion? What was that
7 promotion?

8 A I got promoted to Head of Household. The Head of
9 Household that was working with me, he was injured on the job
10 and so I took over the Chase Street Apartments.

11 Q Is that where they put you at?

12 A Yes. That's where I'd been working at, so I just
13 automatically took over.

14 Q Can you tell us a little bit about the Chase Street
15 Apartments? What were your duties there?

16 A Oh, well, there was five different clients and I handled
17 shopping and basically their money, their food stamp cards, I
18 ledgered all of that. I sup-, well, not supervised, but I
19 watched over the med sheets, making sure that everybody was
20 given the meds.

21 Q Meds? Meds short for what?

22 A Medications, I'm sorry.

23 Q All right.

24 A I ordered meds. I made sure that people were doing what
25 they were supposed to be -- you know, and I also did actual

1 hands-on care with them too.

2 Q And you also mentioned financials?

3 A Yes. That would handling their food stamp cards, their
4 grocery money, their spending money, and ledgering it onto
5 ledgers and then I would turn that into them so that they had
6 receipts and everything was monitored.

7 Q When you say you would turn that into them, who would you
8 turn that ledger to?

9 A Oh, into the office, into --

10 Q Any particular person at the office that you would hand
11 that ledger to?

12 A At first, well, they would have a person come up
13 periodically.

14 Q Who was that person?

15 A It was random. It could have been Amy or -- boy, that was
16 a long time ago. Maybe Jaime.

17 Q Jaime?

18 A It was whoever was set to come up that month.

19 Q Jaime, you said, you mentioned Jaime. Do you remember
20 Jamie's last name?

21 A Callahan.

22 Q How often did you hand ledgers to her?

23 A I can't remember. When we first began we didn't see a lot
24 of the office at all. They started really monitoring the
25 ledgers probably in 2011, I want to say. And then they would

1 come up in a group and we would do this whole system of handing
2 over the paperwork to them and they would audit everything we
3 did.

4 Q Who was them? Who was this group that came up?

5 A Oh, I'm sorry. Jamie Callahan, Molly -- I never can
6 remember her last name. In the beginning it was Kathy Grice
7 was coming up in the beginning, but those people changed out
8 and then it became Dawn Worthing, and then it was Laura and
9 Dawn Worthing, and then it was Laura.

10 Q Okay. Laura?

11 A Adams.

12 Q Adams. Again, going back to Jamie Callahan. Do you know
13 what her position was?

14 A I think -- well, I think what they call it is the
15 protective payee for the clients. I'm not sure what they call
16 it, but she handled all the client finances.

17 Q On average, how often would you interact with her?

18 A Well, for sure, twice a month. Could be a lot more. It
19 depended on how much we were requesting throughout the month.

20 Q On the desk there, if you look underneath there's a
21 document. It's titled "Paperwork Manual".

22 A Yes. Uh-huh.

23 Q Are you familiar with that document?

24 A Yeah.

25 Q Can you tell us how you're familiar with it?

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1 A One of these are in each one of the houses. This is
2 supposed to be what we follow to do the paperwork.

3 Q And are you familiar with the term narrative?

4 A Yes.

5 Q Can you tell us what they are?

6 A It's basically a running journal, a daily journal of
7 activities that the clients do. Med appointments that they
8 might have. They might have specific goals set up by their
9 caseworkers that we're supposed to be working on, and we'd be
10 journaling on what we've done on those goals.

11 Q How often would you fill out a narrative?

12 A In the beginning I did it all the time. I wrote too much.

13 Q In the beginning -- give us a year. When you say the
14 beginning, what year are we talking about?

15 A Can I give the whole history or do I have time?

16 Q Yeah. I'm not going anywhere.

17 A Okay. In the very -- when I first started out, I didn't
18 know much about the narratives, you know? It was basically
19 came in at the end of the month, the Head of Household, and
20 went, "Oh, somebody write something for every day." So nobody
21 really took it seriously then apparently.

22 MR. LOFLAND: I'm going to object. I'm going to object to
23 the characterization of what everybody did without proper
24 foundation.

25 JUDGE POLLACK: Okay.

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1 Q BY MR. FIOL: Just tell us what training you had on
2 narratives?

3 A What training I had on it was that I was trained by people
4 that were, you know, they were trained by each other, so they
5 really --

6 Q Who was the person? Do you think you can give me an
7 official name?

8 A Well, I'm supposed to be trained by the Head of Household,
9 so I ended up getting trained by the person that was working
10 the shift at the time, and as far as narratives went, I was
11 told that we needed to do narratives, but there was really no
12 emphasis put on it.

13 Q Who told you that?

14 A Her name was Mandy -- I don't know her last name.

15 MR. LOFLAND: To which I object and move to strike as lack
16 of proper foundation that the person is a speaking agent or
17 manager.

18 MR. FIOL: We don't know who she is, I was just asking.
19 She could be a supervisor that's --

20 MR. JENSEN: Supervisor or not, she's the one that had
21 trained her.

22 MR. FIOL: Well, first of all, the question is she could
23 be trained by anyone. She hadn't even completed the answer as
24 to who that person was. If the person said something and you
25 want to make an objection, fine. But we don't know who that

1 person is. It could have been someone who is a supervisor. So
2 I think it is premature to make the objection.

3 JUDGE POLLACK: All right. Go ahead.

4 Q BY MR. FIOL: So you said that someone told you something,
5 and I asked you, Ms. Hennings, do you remember who that was?

6 A Yes. Mandy.

7 Q Mandy. Okay. And do you know who Mandy is?

8 A She's another direct service care person.

9 MR. LOFLAND: Same objection. Move to strike. Judge,
10 with all due respect, I'm usually used to a procedure in court
11 and in hearings where if I make an objection the judge asks for
12 questions and rules. What we're getting into now is long
13 narratives from counsel arguing his point without that and
14 taking over control, and to some degree, for the record, we
15 need some sort of control over this.

16 JUDGE POLLACK: Okay. I needed to know whether the person
17 speaking was a supervisor or not. Now that I know it was not a
18 supervisor I can sustain the hearsay objection.

19 MR. FIOL: In fact, I withdrew the question.

20 JUDGE POLLACK: Go ahead.

21 Q BY MR. FIOL: Okay. You said there came a time there when
22 you changed the way you did the narratives?

23 A Right.

24 Q Can you tell us -- when did that happen?

25 A After I got to be the Head of Household, we changed it to

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1 people type something every day because we were working on
2 computers and so someone types something every day, and that's
3 how we were doing it at that time.

4 Q And did there come a time when it changed?

5 A Yes, I think it was about 2010, and they took the
6 computers out of the house, so we had to start hand writing
7 them, and we hand wrote every day at the beginning --

8 Q Okay. Did there come a time when you had to change --

9 A -- or you know, as often as possible. I'm sorry.

10 Q -- Okay. So, you said something about you were doing too
11 many. Did they change that --

12 A Yeah.

13 Q -- in terms of how often you would have to write a
14 narrative?

15 A Yes, I went to a paperwork meeting and I wrote a lot about
16 the clients and the packets were rather thick.

17 Q Let's talk about this paperwork meeting. Do you recall
18 when it happened?

19 A I would say in 2010. I can't tell you. Sorry.

20 Q Can you tell us who was there?

21 A Dawn Worthing, Laura Adams, Jamie Callahan, and Molly.

22 Q Okay. All right. Continue.

23 A Molly and Jamie were busy with my financials, so you know
24 -- and I was talking to Dawn and Laura Adams and I handed them
25 my narratives, and Dawn said to me, she says, "These are really

1 thick. You're filling up my file too fast. You only need to
2 write a narrative a week." And I said okay, and then I started
3 following her suggestion that I do one per week.

4 Q And then once she gave you that suggestion, did you follow
5 that advice?

6 A Yes.

7 Q Which was writing one narrative a week?

8 A Yes, as much as I could. Sometimes not so much, we didn't
9 do the narratives until later.

10 Q And did anyone make objections at these meetings about
11 your writing one narrative a week?

12 A Huh-uh.

13 REPORTER: You have to speak for the record.

14 THE WITNESS: I'm sorry. No.

15 Q BY MR. FIOL: A yes, or a no. But you can't shake your
16 head.

17 A Gotcha.

18 Q I want to change course a little bit and talk about
19 something that happened with your company in 2011. There was a
20 campaign by a union. Are you familiar with it?

21 A Yes.

22 Q Okay. When did you become familiar, find out that there
23 was this union campaign going on?

24 A It was in October 2011. October or November of 2011.

25 Q Okay. Did you have any involvement at all?

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1 A Yes, from the very beginning.

2 Q And can you please tell us very briefly what your
3 involvement was?

4 A In the beginning we met in coffee houses and they
5 basically -- well, they came and I signed a card and then we
6 basically met and they would go over basically what the union
7 was about, what they could offer.

8 Q Now, I'm going to move forward a little bit more to
9 December of that year. Do you recall attending a meeting, a
10 mandatory meeting of employees, and I would think it was in
11 Port Angeles?

12 A Uh-huh. Yes.

13 Q Can you tell us where it was held at?

14 A Red Lion Inn.

15 Q And what city is that?

16 A In Port Angeles.

17 Q Can you tell us approximately how many people were there?
18 Approximately?

19 A You know, I really -- 10? Maybe more?

20 Q Were they employees?

21 A Uh-huh.

22 Q Okay. Now do you recall engaging in any conversation with
23 anyone?

24 A Uh-huh. Yeah, --

25 Q Can you tell us about that?

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1 A -- well, I talked to a bunch of people, but I talked to
2 Alan.

3 Q Alan Frey?

4 A Yes.

5 Q Can you tell us what you recall about this conversation?

6 A Somehow the subject of the union came up and I said to
7 him, "Well, you know what side I'm on." And he said, "I kind
8 of figured that." And I said, "Yes, I'm pro union." And --

9 Q What did he say to that?

10 A He didn't say anything. He, you know, just -- he kind of
11 figured that, I'm sure.

12 Q And did you -- there was a vote for a union, correct?

13 A Yes.

14 Q And did you vote?

15 A Yes.

16 Q I'm going to show you --

17 MR. LOFLAND: This has already been admitted?

18 MR. FIOL: No, I think it wasn't admitted. I think this
19 is one of the ones that -- if it was admitted, fine. But I
20 don't think it was.

21 MR. LOFLAND: No, you're correct.

22 MR. FIOL: Okay.

23 One minute. I don't have enough copies here.

24 Q BY MR. FIOL: Ms. Hennings, I just put before you a
25 document and it's marked General Counsel exhibit 135. Do you

1 under control. So, and it was, I didn't do the right thing.

2 Q I want to move on. I also have in front of you, there is

3 a series of other documents. Could you look at that, ma'am?

4 You may have to -- starting with General Counsel's 136. Take

5 your time. I don't know about how I put on the desk, but take

6 a look --

7 A This one?

8 Q -- look for General Counsel on the bottom and it says 136.

9 A Oh, oh, oh. All right.

10 Q And I'll wait until everybody has an opportunity to, you

11 know, to look at it. This is a write up that's already in the

12 record. You got a write up on April 12th?

13 A Uh-huh. Uh-huh.

14 Q What happened? [Pause] Are you ready?

15 A Yes.

16 Q Okay. So, here's a write up you got on April 12th. Tell

17 us about it.

18 A I was actually seven minutes late to a shift. I had been

19 called in to work an extra shift in the evening, which was out

20 of my normal schedule, and I had a meeting that day that I went

21 to and when I came out of the meeting --

22 Q What meeting did you attend?

23 A It was a union meeting. It was the day that we were doing

24 nominations.

25 Q Nominations for what?

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1 A For the bargaining committee.

2 Q I see. Okay.

3 A But anyways, I came out of that meeting about two minutes
4 to the time I was supposed to be on shift, so I called ahead to
5 the head of household that was working at the time.

6 Q Who was that?

7 A Jackie Callahan. Or no, excuse me. Jackie Cavanaugh.
8 Anyways, I called ahead and let her know that I was going to be
9 late, and as I was getting through town -- I mean it doesn't
10 sound like a lot of time, but there was a little bit more
11 traffic than normal, so I ended up being seven minutes late. I
12 got there. Jackie stayed for a little while longer because she
13 was in the middle of doing things and we just went along as
14 normal. Stacy Dernal (phonetic), and Kim -- and I don't
15 remember Kim's last name.

16 Q Kim Krusi? Kimberly Krusi?

17 A I think so. Yeah. And she, they were there doing their
18 audits that they were starting to do on our books and nothing
19 was ever said then, but then I got this. Well, actually, I got
20 a phone call from Kathy first.

21 Q You say you got a phone call from Kathy Grice?

22 A Yes.

23 Q What did she say? When did you get the phone call?

24 A The next evening -- or the next day when I was working.

25 Q Can you tell us about that phone call?

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1 A She called and she wanted to know if I had worked my
2 scheduled shift?

3 Q What was the scheduled shift?

4 A It was 3:00 to 11:00.

5 Q I see. Okay.

6 A And I said yes, that I had worked my scheduled shift. And
7 she said, "Well, I have a report that you were 10 minutes
8 late," and I said, "I was seven minutes late and it is
9 documented on, you know, I have it documented on my time
10 sheet." And she said, "Well, you didn't call the office."
11 That was the first time I had -- you know, we usually had
12 handled it amongst each other. The person that was affected
13 would have been the Head of Household right before me, and we
14 had already done it that way.

15 Q You're a head of household -- or were a head of household?

16 A Yeah, I am a head -- was a head of household at the time.

17 Q What was the practice at your house?

18 A Same thing.

19 Q What was that? Again, --

20 A They would just call the person ahead of them and you
21 know, each other -- I mean each person would cover for each
22 other, but they would document it on their time sheet if they
23 had a problem. All the households --

24 MR. LOFLAND: Objection. Lack of proper foundation.
25 Speculation.

1 MR. FIOL: No. I asked at her house. She was head of
2 household, right.

3 MR. LOFLAND: I'm sorry, but the answer dealt with all
4 head of households, which is improper. Move to strike.

5 JUDGE POLLACK: It won't be taken as that. We're just
6 talking about this particular household. Go ahead.

7 Q BY MR. FIOL: At your household, what was the practice?

8 A That's how we handled things.

9 Q I'm sorry, I'm going to have to ask you to repeat it.

10 A Okay, I'm sorry. At our house, if you were going to be a
11 couple of minutes late you called ahead to the person that was
12 on shift, and they would know that they were going to stay a
13 couple minutes later to cover for you, and then you would
14 document it on your timesheet. If it happened, it rarely
15 happened at my house.

16 Q Okay. On those occasions when it happened in your house,
17 do you have knowledge of anyone receiving a written warning?

18 A No. No.

19 Q And you were at that house for how long? As of the time
20 that you got this write up --

21 A Oh, okay, for that house? I'd been at that house for
22 probably a year.

23 Q And in that year, to your knowledge, no one ever received
24 a write up for coming in late?

25 A No. No, can I preface that?

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1 Q No, that's fine.

2 A I don't remember anybody coming in late, so it just wasn't
3 a common practice.

4 Q Did there come a time when you were elected to the -- you
5 mentioned you went to a meeting on bargaining committee?

6 A Uh-huh.

7 Q And were you elected to that committee?

8 A Uh-huh. Yes.

9 Q And do you recall when that was?

10 A May? Was it May?

11 Q Of what year?

12 A Of 2011?

13 Q 2012 you were? Accurate?

14 A Okay. Yeah.

15 MR. LOFLAND: Well, with all due respect, I object --

16 MR. FIOL: Well, I think --

17 MR. LOFLAND: -- I haven't finished.

18 MR. FIOL: I'll let you finish.

19 MR. LOFLAND: Counsel is leading. The witness testified,
20 he then just provided the answer. That's improper.

21 JUDGE POLLACK: With something like dates, I think it is
22 permissible. People have a lot of trouble with dates, go
23 ahead.

24 [Ringing telephone.]

25 THE WITNESS: Oh, I'm so sorry. I'm sorry. I'm sorry.

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1 JUDGE POLLACK: Would you please turn that off?

2 THE WITNESS: Yes, I will. I apologize.

3 Q BY MR. FIOL: Now, you were elected to the bargaining
4 committee?

5 A Uh-huh.

6 Q And I would assume there came a time --

7 A Yes, I'm sorry. Yes.

8 Q -- And did there come a time when you started to attend
9 bargaining sessions?

10 A Yes.

11 Q I'd like to direct your attention now to August of 2012.
12 There's no document. This is August of 2012. Do you recall
13 attending a bargaining session on or about August 6th?

14 A Yes.

15 Q Okay. Do you recall any issues that were discussed that
16 day?

17 A Head of household.

18 JUDGE POLLACK: We have to have the witness speak up.

19 THE WITNESS: I'm sorry. Head of household.

20 Q BY MR. FIOL: Just stop with head of household. What do
21 you remember about that?

22 A Well, they basically said that head of household does no
23 more than any other direct care service worker.

24 JUDGE POLLACK: Who said that?

25 THE WITNESS: The other side. Alan Frey. He said it.

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1 Q BY MR. FIOL: And how did that come up?

2 A Because they were asking -- well, there was a situation
3 that they want to take head of household out and put in house
4 supervisors. And because they want somebody to be more
5 management oriented and more the eyes and ears of the office.

6 Q So now I will ask you to look at a document. If you would
7 please look at -- it should be General Counsel exhibit 137.

8 Now Miss Hennings, do you see that in front of you?

9 A Yes.

10 Q Okay. And that's a write up, a letter of direction?

11 A Uh-huh.

12 Q Now tell us about that please?

13 A This was a write up -- Alan came in and thought that I was
14 scheduling because I had the schedule in front of me and I was
15 writing something.

16 Q When you say "came", "when he came", what do you mean by
17 came in? Where? Where were you?

18 A I was at the 7th Street house and Alan comes in and checks
19 things out.

20 Q Is that -- by the way, is that Alan Frey?

21 A Yes, Alan Frey, I'm sorry. He comes and he checks things
22 out periodically. And he came in and I was sitting at, on the
23 couch with the coffee table in front of me and I had all the
24 scheduling stuff in front of me. And he said, "You better not
25 be scheduling, because it was testified in front of the NLRB

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1 that head of households don't schedule." I said, "I'm not
2 scheduling."

3 Q What were you doing?

4 A I was working on the schedule -- what happened is during
5 that time we had one person leave for family leave because of
6 an illness and another person leave for reasons I don't really
7 know, she was out too. And so everybody in the house was
8 scrambling to try and cover shifts. People were working
9 different shifts and we had no hard copy of anybody's -- when
10 anybody was going to work. You know? There was no schedule
11 there, and I guess what they were supposed to do was call the
12 office to find out if they didn't know when they were going to
13 work to find out.

14 Q Who does the scheduling?

15 A At that time it was Kathy Grice.

16 Q Okay.

17 A So what I was doing was we had a -- we try to write things
18 down so people could understand when they were supposed to be
19 working. I was not making scheduling, I was not putting them
20 in slots, I was writing things down so everybody knew, "Okay,
21 you were going to be here at 7:00 to 3:00, Kathy already set
22 that up for you. You were going to be there at 3:00 to 11:00.
23 You're going to take over the shift," you know. Back and
24 forth. And so but it became this huge messy document, and so I
25 was trying to rewrite it so everybody could understand it.

1 Q What were you writing. What were you trying to write
2 down?

3 A Kathy had, you know, scheduled people in, they had told me
4 when they were supposed to be working. I had kind of jotted it
5 down on a piece of paper so that everybody understood when they
6 were supposed to be coming in, and I -- you know, nobody knew
7 when their shifts were.

8 MR. LOFLAND: Objection.

9 JUDGE POLLACK: Continue.

10 A So anyways it was just to keep everybody organized. You
11 know, I was not filling spots, I was not calling people in, I
12 was not asking people to work these slots, I was writing it
13 down so everybody could look at something and say, "Oh, okay,
14 that's when I -- I remember now, that's when I was supposed to
15 work."

16 Q What did you tell Mr. Frey when he accused you of making
17 out a schedule?

18 A I told him I was not making out -- I was not scheduling.
19 And I was not scheduling.

20 Q By the way --

21 A I told he -- he at one point --

22 MR. LOFLAND: Objection. It's now a narrative rather than
23 a response to the question.

24 THE WITNESS: I'm sorry

25 MR. FIOL: That's fine.

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1 Q BY MR. FIOL: And by the way, did you ever get an
2 opportunity after that incident at the house to talk about that
3 with Mr. Frey?

4 A Yes.

5 Q Tell us about that. When did that happen?

6 A That happened probably three weeks after I requested
7 training in certain areas and we talked about the scheduling
8 and I sat down and I told him that I was not scheduling. I
9 won't say that I was scheduling because I was not and he told
10 me that that was his opinion.

11 Q It was his opinion what?

12 A That I was scheduling.

13 Q Did he say anything else about that? Do you recall him
14 saying anything else besides that it was just his opinion?

15 A I don't know.

16 Q That's fine.

17 A We said a lot of things.

18 Q I want to ask you now to take a look again in that stack
19 of documents. If you would please look at the one that's
20 listed as General Counsel's exhibit 138.

21 A Yes.

22 [Long Pause]

23 Q BY MR. FIOL: 138. It's dated August 15th. Do you
24 remember this document?

25 A Uh-huh.

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1 Q It's a write up?

2 A Uh-huh.

3 Q And it's two bullet points, right?

4 A Uh-huh.

5 Q First one. Monthly narratives. Tell us about this
6 incident with the monthly narrative?

7 A Alan came in and he got the black book, which is where --

8 Q Alan. When you say Alan came in, can you tell us where
9 did Alan come in to?

10 A Oh, okay. I'm sorry. Alan Frey came into 7th Street house
11 to do his normal checking the books and everything. He was
12 canvassing. He always does surprise visits. Anyways, I gave
13 him the black books which holds the narratives, and the med
14 books, and he was sitting going through the black books, and he
15 noticed that I hadn't done as many narratives as he would like.

16 Q And how many narratives had you done?

17 A Well, on two of the clients, I'd had done like two or
18 three. On one of them I'd only done one, but the week wasn't
19 up yet, so --

20 Q Was that in keeping with your practice as you understood
21 it?

22 A When I was doing the weekly narratives a lot of times I
23 would wait until the end of the week to do them, but there was
24 a lot of times I would do daily narratives if they had
25 something like a birthday party or something special that went

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1 on we would do daily narratives. But if it was just status
2 quo, we would wait until the end of the week or whatever, but I
3 didn't have them ready for him when he wanted.

4 Q And in this particular case, was it adequate? Did you
5 have that kind of event like a birthday party or was it just
6 status quo?

7 A It was just status -- you know, it was just a normal week.

8 Q And other people would have that record in?

9 A Yes.

10 Q Are they also besides yourself responsible for doing a
11 narrative?

12 A Yes.

13 Q And when Mr. Frey would come to the house to check, would
14 you walk with him to review or would he go on his own and just
15 take a look at the books?

16 A Oh, no, I would give him the books. We were usually busy
17 doing other things, so he would go off and do it on his own.

18 Q And would you be aware of other people in the house
19 writing their narratives?

20 A Oh, yeah. I knew whether people were doing it or not,
21 yeah.

22 Q Who were the other people in the house, by the way?

23 A 7th Street there would be Mary Hopper would be the overlap
24 person during the day. Evening shift would have been Teresa
25 Hennings and at that time it was Rhonda something -- Hampton,

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1 Ham-. Yeah. And then the weekends would have been Corby,
2 Dayrew, and I can't remember who the daytime person was. It
3 will come to me.

4 Q Did you have a chance to review their books? Their
5 narratives?

6 A Well, there wasn't any otherwise.

7 Q To your knowledge, did any of those folks that you just
8 mentioned receive a written warning such as this?

9 A No.

10 Q There's another bullet point that says medication
11 charting?

12 A Yes.

13 Q And before I discuss that, if you could all look at that -
14 - Excuse me. Ms. Hennings, General Counsel's 148. If you
15 could just please take a look at the very last page.

16 MR. LOFLAND: What number are you looking at?

17 MR. FIOL: Oh, this is 148. It's the very last page.

18 It's not numbered, at least I don't see a number on it. So
19 it's just the last page.

20 MR. LOFLAND: I'm sorry, I don't believe I have 148.

21 MR. FIOL: Yeah, this is paperwork from me.

22 MR. LOFLAND: Oh, I'm sorry. Thank you.

23 Q BY MR. FIOL: So let's look at the -- what was the problem
24 that you had with the medication charting according to this
25 write up?

1 A Oh, according to this write up, it said that -- I can't
2 remember exactly.

3 Q If you look at the back, it would be much more helpful.
4 If you want to take a look at the -- look at the last two
5 paragraphs in the back of that exhibit.

6 A Right. One was given but not signed and the other one was
7 not given.

8 Q And it mentioned something about -- I noted two
9 medications were circled on August 14th. Now if you could just
10 help us understand what this means. I don't know. I'm going
11 to ask you -- now before we do anything, I want the rest of us
12 all get to the same page. It's the last page and it's a front
13 and back. So if we look at the front -- this is a sample,
14 right, of a med sheet?

15 A Uh-huh.

16 Q And they're circled, see that?

17 A Right.

18 Q What does that mean, when there's a circle there?

19 A A circle means there is a problem. Either the medication
20 was given and the staff member forgot to sign, neglected to
21 sign, or that the medication was not given, nobody signed, and
22 that needed to be, you know, a med error form needed to be done
23 on that and it needed to be taken care of.

24 Q When you say signed, is that like an initial, is that what
25 is supposed to be put in there?

1 A Yeah. Yeah. Initial.

2 Q And who is the person who is supposed to put in the
3 initial?

4 A The person that gives the medication.

5 Q I see. And then who is the person who circles?

6 A Whoever sees that there is an issue.

7 Q Okay. And then if you would please flip over to the back,
8 there's something on the back, right?

9 A Yes.

10 Q Can you tell us what that is? What it signifies? What it
11 means?

12 A This is an explanation of why that medication, there was a
13 problem with that medication. Like in this one, it has the
14 Tegretol and it has an explanation of, "John refused to take
15 the medication. Doctor notified. No change noticed." You
16 know, just basically why the client, or why the client didn't
17 get the medication and what the result was, what you did, and
18 then the time and your initials.

19 Q Who is the person who is supposed to fill this thing out
20 in the back?

21 A The person response for the error.

22 Q The person responsible?

23 A Yes.

24 Q Is it the same person who circled it?

25 A Yes -- oh, no! No, excuse me. No. It's not the person

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1 that circled it, it's the person that actually gave the med is
2 responsible to fill out this.

3 Q Or didn't give the med.

4 A Or didn't give the med, yes.

5 Q So going back now, now that we understand that, I want you
6 to go back. What was the problem here then that you supposedly
7 did?

8 A Okay, well, those two meds were circled.

9 Q Who circled them?

10 A I did.

11 Q Okay.

12 A Okay. I called the person that had made the error and you
13 get answering machines all the time because nobody wants to
14 answer their phones, and I left a message, but I didn't
15 document on the back of this -- I didn't realize that's what we
16 were supposed to do, but I didn't document on the back of this
17 that I did call the person and leave a message or whatever.

18 Q But is there a place here where you're supposed to put
19 that, that you'd made a call? Just take a look at it. I don't
20 see that.

21 A No, but --

22 MR. LOFLAND: Could we, Your Honor, I object. Counsel
23 needs to ask questions, not make comments.

24 JUDGE POLLACK: Go back.

25 Q BY MR. FIOL: Just going back, your testimony was the

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1 person who makes the error is supposed to fill this out?

2 A Yes.

3 Q Okay. And then what did you do with this person who
4 failed to give the medication in this incident?

5 A I called them and left a message on their answering
6 machine to come in and fix it.

7 Q Okay. And then why was -- what was the reason given for
8 your write up?

9 A Well, because when I made that call Alan Frey said I
10 should have documented on the back here. Well, I was trained
11 differently, number one. And because I said I was going to
12 work on it later, meaning that after we were done I would work
13 on it later, he took it as I was going to work on it later,
14 okay?

15 Q How many years have you been doing this, filling this type
16 of --

17 A Lot of years.

18 Q And what he told you, was that something that you had done
19 before?

20 A No.

21 Q Okay. Let's move on. The next document that's there is
22 General Counsel's 139. It's General Counsel exhibit 139. It's
23 the write up that you received on August 20th.

24 A Right.

25 [Long pause]

1 Q Is that the --

2 A 7th Street House.

3 Q 7th Street House. Okay.

4 A And at first Mary stayed there and everything was, you
5 know, fine, everybody was --

6 Q Is this Mary Harper?

7 A Huh?

8 Q Mary Harper?

9 A Mary Harper. Everything was fine, everybody was just you
10 know, visiting, talking about different things that were going
11 on in the house and then Mary left and Mike -- he wanted to --
12 or he kept asking me if I thought that it was fair that they
13 marched on his house. I told him, I says, "I don't know, I
14 wasn't there, I wasn't involved." Alan said to me, "You're
15 union, you're involved." And so then and Mike kept pushing it,
16 and I kept telling them I need to keep this professional, you
17 know? Then eventually Alan said, "I understand the position
18 you're in," and he said, "We need to stop," and then they left.

19 Q I am now going to move forward to this year, and you'll
20 have -- it's the last document that's in front of you it's
21 General Counsel's exhibit 140. So, did there come a time, my
22 understanding was, when you were eventually demoted from your
23 head of household position?

24 A Yes.

25 Q Okay. Tell us about that.

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1 A Tell about?

2 Q What led to the --

3 A Oh. We were at a paperwork meeting.

4 Q Where and when?

5 A It was in Port Angeles at the OPSL office, which is the
6 off-shoot of KTSS.

7 Q And when was that, about?

8 A Well, let's see, I got demoted February -- when did I get
9 demoted?

10 Q In February of this year is what I have.

11 A Well, this -- this says that the meeting was on January
12 15th.

13 Q Okay.

14 A Anyways, --

15 Q So that's probably when the meeting was a you recall it?

16 A Yeah.

17 Q Okay. Let's go to that meeting, what happened?

18 A I turned in my paperwork and the medical paperwork I
19 turned in, there was errors on it, one of the staff members
20 didn't complete the -- fix an issue she was supposed to do on
21 it.

22 Q That medical form that we just discussed earlier?

23 A Uh-huh. I had asked her to complete the forms, and she
24 was once a head of household, I figured she knew what she was
25 doing, but anyway she didn't complete it.

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1 Q Who was this person?

2 A Her name was Sandy -- I don't know. She was new to my
3 household. She had just started working that month there.

4 Q What is it that she did not do?

5 A There was different things. She would forget to initial
6 and when I told her to fix that, she would do the initialing,
7 but she would neglect to document on the back, or just
8 different things. She didn't complete all the steps to doing,
9 or fixing her errors on the back. Because it is the head of
10 household's responsibility to make sure all that is done, I
11 didn't, you know, complete what I was supposed to have done, so
12 when I turned the paperwork in, I was sent back to get it
13 fixed. When I sat down to fix everything, Laura came in and
14 said they wanted copies of the paperwork and that was basically
15 the tip over the edge.

16 Q How different was that from what you had done in the past?

17 A Well, normally I had everything completed when I went in
18 for the paperwork meeting.

19 Q And what was the reason why you didn't have it completed
20 this time?

21 A Just worn out.

22 Q Because she didn't do what you told her to do?

23 A Well, yeah, but it still was my responsibility to make
24 sure that it was done.

25 Q All right. So then going back to this meeting that we're

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1 talking about, what happened? What else was discussed?

2 A Oh, in this? We really didn't go through point by point.

3 Are you talking about the meeting?

4 Q The January meeting we were just talking about, yeah.

5 A Oh. The January -- nothing really was discussed. They did

6 my financials and they went over the medications and showed me

7 where there was problems and I took them back to fix them.

8 That's about it.

9 Q So what happened after that meeting?

10 A I went home or went back to -- my home, huh, I wish. I

11 went back to 7th Street and did the things that, the normal

12 things that I was supposed to do during the day and then just

13 about the time I was ready to leave I sat down the Sandy to

14 have her do the fixes and that's when Laura came in.

15 Q So then what happened then eventually that led to your

16 being demoted. This is January 16th and you were Demoted in

17 February.

18 A Right.

19 Q Tell the court what happened?

20 A I'm trying to think of what happened.

21 Q Take your time.

22 A There was so much that went on.

23 Q All right. Just take your time.

24 A Well, in February there was another -- I'm not sure, but I

25 think this is the right incident, there was another issue with

1 financials.

2 Q Okay. What was the issue?

3 A I had done all the spending account, and the person --

4 there was Molly -- Molly was the only one there, Jamie

5 Cavanaugh was not there, and she's --

6 Q Jamie Callahan.

7 A -- Callahan, excuse me, was not there. She usually did

8 most of my paperwork, and she was really good at it. And Laura

9 was there. Jamie found a receipt -- excuse me, not Jamie --

10 Molly found a receipt that was to the spending account, and I

11 think it was a Serenity House spending receipt. They have a

12 real bland receipt, it doesn't show titles on it, it just shows

13 numbers.

14 Q Serenity House, what is that?

15 A It's like a second shop where the clients like to go to

16 shop.

17 Q I see. Go ahead.

18 A And she misread the receipt. It said --

19 Q Who misread the receipt?

20 A Molly did. He had spent \$7.03, I think it was, and she

21 misread it for \$10.03, and then she showed it to me and I'm

22 like -- by that time I'm flustered and I said, "I don't know.

23 I don't know where the other three dollars was." She kept on

24 and kept on and I finally said the only thing I can think of is

25 that somebody donated three dollars so that one of the clients

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1 could go to the dance.

2 Q What dance is this?

3 A They have once a month they have a snap dance where all
4 the clients go and it's really a blast. So that's the only
5 thing I could think of, when actually if I would have thought
6 about it it would have been the other direction. So anyways,
7 she took it back and one of the things that we're not supposed
8 to do is lend money. Well, this person I know didn't lend it,
9 she donated it, but still, the point is we're not supposed to
10 do any of that.

11 Q Who is this -- you say this person. Who is this person?

12 A The one that donated the money?

13 Q Donated?

14 A It was Teresa Hennings.

15 Q Your sister?

16 A Yes.

17 Q All right, continue.

18 A Well, anyways, so Alan called me later and he wanted to
19 know who it was that had done it.

20 Q Who had done what?

21 A That had lended the money.

22 Q Okay. And what did you say?

23 A And I said I didn't know, that I would have to find out
24 who it was. So anyways, I talked to everybody and then I
25 talked to my sister, and she said, yeah, that she had done it.

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1 So I called him back and told him who it was, which was -- that
2 was hard.

3 Q Because it was your sister?

4 A No. Because I don't -- you don't do that to people. You
5 don't throw them under the bus.

6 Q To your knowledge, did these other people, Teresa, did any
7 of them receive a write up as far as you know?

8 A For that three dollars?

9 Q Yeah.

10 A I'm not -- I don't -- I think maybe she received a phone
11 call. I'm not sure if she received a write up or not.

12 Q All right. And then you were eventually were demoted?

13 A Yes.

14 Q Let's go through the demotion. When did that take place?

15 A I think it was February 4th, and I received a call from
16 Alan. It was after my shift. He told me that they had serious
17 concerns about my work and that they were going to -- I was
18 demoted without pay -- excuse me, I was put on administrative
19 leave without pay so that they could investigate. And then it
20 was about a month later that they called me and then they had
21 this report and then demoted me to direct service care.

22 Q And you had been a head of household for how long?

23 A Four years, I think.

24 Q Thank you very much Ms. Hennings. I have nothing further.

25 A Thank you.

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1 MR. JENSEN: I had some questions. You're good for a
2 while?

3 THE WITNESS: Oh, sure. I just want to get this -- I'm
4 nervous and having to remember all of this is --

5 DIRECT EXAMINATION

6 Q BY MR. JENSEN: Okay. I'm not sure I got the date when
7 you started at KTSS, as best as you can remember.

8 A I'm, thinking it's November 19th, 2009.

9 Q And you said -- Mr. Fiol was trying to find out how long
10 you had been in the industry and I think you said since you
11 were about 18 years old, but I don't know how old you are now.
12 So either how old are you now or how many years have you been
13 in the industry?

14 A Yeah, off and on. I'm 56.

15 Q Okay. Thank you. You have some status as a medical
16 assistant, is that a license?

17 A Yes. Yes.

18 Q Okay. And when did you obtain that?

19 A 2005.

20 Q Okay. And you've had it since?

21 A Yes.

22 Q What do you have to do to get that?

23 A I was in school for a year, and then you have to get a job
24 and apply for the license. The license -- I can't get the
25 license right at the moment because you apply under a

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1 physician.

2 Q Okay. You have to be working with a physician?

3 A Uh-huh.

4 Q Okay. Who grants the license?

5 A Washington state does.

6 Q Okay. As a head of household, when you were working for
7 KTSS, were you ever told by anyone in management that you had
8 some oversight responsibility over the staff working with you
9 in that home?

10 A It was our responsibility to make sure that things were
11 done, yeah.

12 Q Why do you say that?

13 A Because that's what they told me all the time.

14 Q Okay. Who told you that?

15 A Alan Frey -- all the management people.

16 Q And they told you to make sure things were done?

17 A Yes. That was the head of household's responsibility.

18 Q Okay. Anything else specifically you were told about your
19 responsibilities as to the rest of the staff in that home?

20 A Not really.

21 Q When you, as a head of household, how much of your time
22 was spent on administrative stuff versus hands-on -- what I'll
23 call of direct care?

24 A Hands-on care? Maybe an hour every other day on
25 administrative.

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1 Q Okay. So most of the time you were doing what?

2 A Direct care.

3 Q Okay. What everybody else was doing?

4 A Uh-huh.

5 Q Okay. Let's talk about the narratives, follow up just a
6 little bit on the narratives. So, if you were doing a
7 narrative, I think you said typically you were doing them
8 weekly, is that right?

9 A Yeah, well it depended, yeah.

10 Q Okay. When you do them weekly, would you then toward the
11 end of the week write down things day by day that had happened
12 that week? Is that how you did that?

13 A Just kind of a narrative that would encompass what had
14 happened throughout the week, yeah.

15 Q Would you necessarily make an entry for every day?

16 A I would if there was special things going on. But if it
17 was status quo, no.

18 Q Okay. What kind of special things would you be writing in
19 there?

20 A Oh, about birthday parties or if they had a special
21 meeting, or if they went to work, job search, or, you know,
22 just things that were out of the ordinary.

23 Q Did you ever have experience where your narratives were
24 being turned in late?

25 A Not that, not that I remember. Not that I recall, but it

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1 could have happened.

2 Q Okay. And that's all we're asking, what you can recall.

3 Were you trained by anybody in management about how to do
4 narratives? Other than the remarks that Dawn made to you about
5 you're filling my files, but other than that were you trained
6 by anybody in management how to do narratives?

7 A We had some meetings on narratives, but that was after I
8 had talked to Dawn. Yeah.

9 Q Okay, when did you start having those meetings?

10 A I would say in -- right around 2011, everything started
11 gelling together better. They were really trying to pull
12 everything together and do a better job.

13 Q When in 2011? Early, mid --

14 A Early. Yeah.

15 Q Early, okay.

16 A Yeah, they were really at that time they were getting more
17 people in the office and they were trying to really pull
18 everybody together to do the job.

19 Q And what were you then told by management about
20 narratives?

21 A That I don't remember. I can't recall.

22 Q Do you remember if you were told that they had to be more
23 detailed?

24 A I'm drawing a blank here. They wanted the narratives to
25 encompass stuff that they had done -- important stuff that they

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1 had done.

2 Q Was there any discussion about the time limits of
3 narratives, if you recall?

4 A Once a month. They had to be in at the paperwork meeting.

5 Q You were on the union's bargaining committee, is that
6 correct?

7 A Yes.

8 Q Do you know if there was such a thing as a union
9 organizing committee?

10 A Yes.

11 Q Were you on that as well if you recall?

12 A Organizing committee -- can I understand -- can you
13 explain to me what an organizing committee is and then I can
14 tell you?

15 Q No. I'm using a term that I'm aware of in this case, so
16 I'm not trying to define that. So if you don't know, that's
17 fine.

18 A I can't tell you exactly what an organizing committee was.
19 I can tell you what I did --

20 Q Do you know if your picture was on a flier sent out to
21 employees generally?

22 A Yes.

23 Q In support of the union?

24 A Yes, it was.

25 Q And with your name typed on it?

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1 A Yes.

2 Q Do you know when that was, approximately or precisely?

3 A I would say maybe November of --

4 Q Of 2011?

5 A It was when we first began, very first couple of months
6 that this whole thing began.

7 Q You said you signed a union card, correct?

8 A Yes.

9 Q When did you do that and where?

10 MR. LOFLAND: Either irrelevant or immaterial to the
11 issues.

12 MR. JENSEN: It would go to employer knowledge.

13 MR. LOFLAND: We have no knowledge of cards. We never see
14 those.

15 JUDGE POLLACK: Go ahead.

16 MR. JENSEN: Thank you.

17 Q BY MR. JENSEN: When and where did you sign a card?

18 A They came to my house and that was about in October.

19 Q And who came to your house?

20 A Her name was Lauren Berkle.

21 Q Okay. I'm going to move on. You attended a mentoring
22 meeting at the Red Lion in Port Angeles?

23 A Yes.

24 Q And were management officials there?

25 A Yes.

1 A Uh-huh.

2 Q And did you seek reimbursement?

3 A Oh, I never -- that was actually the first time I had done
4 that, yeah.

5 Q Do you know of any other cases where other staff had done
6 that? How do you know of that?

7 A Well, because it was -- you know, because I know it was my
8 sister that did it a lot.

9 MR. LOFLAND: Object. Move to strike with lack of
10 personal knowledge and proper foundation.

11 JUDGE POLLACK: Sustained.

12 Q BY MR. JENSEN: How do you know your sister had done it?

13 A Well, because she would write it on the receipt. But, my
14 sister wrote it as donation. She gave it as a donation.

15 Q The time when you were a few minutes late to work, had you
16 been late before?

17 A Yeah, a couple minutes late, yeah.

18 Q Did an issue arise as a result?

19 A No, because we just handled it. You know, I called ahead
20 and let the person know ahead of time.

21 Q How often does your -- before the union campaign started
22 in late 2011, how often would Alan Frey come down by your home
23 when you were present?

24 A Oh, I don't know, maybe once every two weeks maybe.

25 Q Did the frequency of his visits change after the advent of

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1 the union and your involvement with the union?

2 A Some, yeah.

3 Q How so?

4 A It came more frequently.

5 Q You were asked by Mr. Fiol about some -- when you were
6 working at your house and Alan came and he believed you were
7 doing some scheduling. Did Mr. Frey come over and look at the
8 paper closely at exactly what you were doing?

9 A No.

10 Q Did he ask for a copy of it?

11 A No.

12 Q So how could he think you were scheduling? What was he
13 able to see you doing and from where?

14 A Well, I had my improvisation of a schedule in front of me
15 and you could see dates and the names written down of who would
16 be working what shifts, next one, on and on and on. And then
17 it would have open holes, and then I had another stack of
18 papers sitting beside me where I was rewriting it so you could
19 understand it because the one was just a mess. And so when he
20 came in he saw me with that and he says, "You better not be
21 scheduling." And I said, "I'm not." And I said that I was
22 working with Kathy on the stuff, but what I was doing was I was
23 writing from what was on this mess onto a piece of paper that
24 was more legible that everybody else could understand and you
25 could see then where the open holes were or where there was --

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1 or when other people could see okay, I'm going to be taking
2 over another shift because this person is gone. It's just to
3 make it more legible so they could see it.

4 Q When you say open holes, what do you mean?

5 A Well, like shifts weren't covered yet.

6 Q Okay. So the information you were recording you
7 understand is that which Kathy Grice had already communicated
8 as the schedule?

9 A Yeah, and then if I found an open hole, I would call her
10 and I would say okay, there's an open hole there and she would
11 okay somebody and I would put right beside it, okayed by Kathy
12 Grice.

13 Q Where was Alan in relation to your papers such that he
14 could decide you were scheduling?

15 A He would be like from me to you.

16 Q Did he come closer and examine them?

17 A No.

18 Q Did you tell him that you would call Kathy Grice when
19 there was a hole?

20 A I just told him that I was working with Kathy Grice on it,
21 and he apparently talked to her and she said she wasn't.

22 Q Did you get an annual evaluation at work?

23 A Uh-huh.

24 Q I haven't seen any of them. Were they positive in nature?

25 A They were very positive until the last one.

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1 Q And when did you get the last one?

2 A I don't know, I don't remember.

3 Q Do you know what year it was?

4 A This year. I mean 2013. I think.

5 Q You were asked about a conversation that you had with Mike

6 Foster and Alan Frey and yourself about a union protest

7 marching on his home, something to that effect. I think you

8 referred to that as in November 2012 protest --

9 A Uh-huh.

10 Q -- your estimation of the date?

11 A Uh-huh.

12 Q Do you know when your conversation with them occurred?

13 A It was not long after that because -- it was -- I can't

14 exactly tell you. I think it was within the next month and a

15 half, something like that. A couple of weeks maybe.

16 Q And it was at the client's home where you were working?

17 A Home, yeah.

18 Q As to those medical issues that you got in trouble for,

19 were those issues cases where other staff had committed or done

20 an act or failed to do an act, or was it where you had done the

21 act or failed to do the act?

22 A It was other staff members, but yes. It was another staff

23 person.

24 Q Did you ever have a conversation with Alan Frey about

25 whether or not he needed to document disciplinary actions since

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1 the advent of the union?

2 A There was a time when he came in and he was going through
3 everything.

4 Q Let's stop you there so we get -- what time are we talking
5 about? What was the time and place?

6 A This was after the union had come in --

7 Q You mean after the election?

8 A -- yeah.

9 Q Okay.

10 A And said to me that they had to be extremely careful with
11 -- especially with the union.

12 Q Where was this conversation?

13 A It was at 7th Street House.

14 Q And who was present besides you and Alan?

15 A Just me and Alan.

16 Q Okay. Anything else you remember about that conversation?
17 How did it come up?

18 A I don't know. I don't remember. I'd have to think. I
19 hadn't thought about that.

20 Q Has anyone in management ever expressed to you, told you
21 were being targeted by management?

22 A Has anybody ever told me from management? No.

23 Q In the past -- well at KTSS, has there ever come a time
24 when staff have to try to switch shifts with one another?

25 A Uh-huh.

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1 Q Okay. And how was that done?

2 A Well, you're supposed to contact the office and let them
3 know of the shift that you need to switch, and then they'll
4 find somebody for that. In the past we had kind of done that
5 on our own.

6 Q Now you say in the past. Until when? When -- so at some
7 point you were doing this on your own, just the staff was
8 working together and saying can you cover for me at this time,
9 correct?

10 A Yeah, uh-huh.

11 Q Is that what you're saying?

12 A Uh-huh.

13 Q And when did that change?

14 A I'd say right about 2010 when they started tightening up,
15 2011 when they started tightening up.

16 Q Before or after the advent of the union?

17 A Yeah, before. Before. You know, it was -- I mean we --
18 that's how everybody handled it. Nobody realized they were
19 doing it wrong if they were.

20 Q And how were you told, if you recall, that they were going
21 to tighten up on that? If you recall.

22 A I think we just had -- I can't quite recall, but I think
23 it may have been in a training, you know, when they pulled all
24 the heads of households together, or it may have been that
25 somebody had -- you know, the issue had happened, and you know.

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1 I don't know exactly.

2 MR. JENSEN: Nothing further.

3 JUDGE POLLACK: Off the record for a moment.

4 **(Off the record.)**

5 **(On the record.)**

6 MR. LOFLAND: I request affidavits.

7 MR. FIOL: I have three affidavits, and then I have a
8 statement we filed with the court documents.

9 MR. LOFLAND: I'm going to need some time to look at
10 these, but I'd like to point out something that is happening.
11 We have the door open and witnesses are standing outside who
12 look like they are former employees. The sequestration order
13 doesn't do much good if they're standing out and able to hear
14 what's going on, so I don't think counsel was aware of that,
15 but we need to make sure that the witnesses are not hovering
16 about listening to the testimony.

17 JUDGE POLLACK: Okay.

18 MR. FIOL: Do we have anybody that we know? I know there
19 was one person and she's from our staff.

20 JUDGE POLLACK: All right.

21 MR. FIOL: And I know who the witnesses are. The person I
22 did see was a member of our staff.

23 JUDGE POLLACK: Okay. All right. Let's take a break
24 while Mr. Lofland reviews the statements. Off the record
25 please.

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1 (Off the record.)

2 (On the record.)

3 MR. FIOL: Before we begin, the court reporter told me
4 that General Counsel's 135 was not received.

5 JUDGE POLLACK: I thought it was received.

6 MR. FIOL: Yeah. I thought so.

7 JUDGE POLLACK: If it wasn't received, it's received now.

8 MR. FIOL: And then one other point too that was raised
9 during the break, when I walked out I ran into a witness and I
10 told her that -- I mean I took her upstairs to our library. I
11 hadn't seen her until I walked out. She told me that she was
12 told by our receptionist, the door was open and so on. She can
13 explain it better than me, but I just wanted to make that point
14 to the judge that when I walked out I saw her and I took her
15 immediately upstairs.

16 UNIDENTIFIED SPEAKER: She wasn't particularly close. I
17 mean she was a ways down there still.

18 MR. FIOL: Yeah, okay.

19 JUDGE POLLACK: All right.

20 MR. FIOL: And because it is set up with the door open
21 like that.

22 JUDGE POLLACK: Okay. Mr. Lofland, go ahead.

23 **CROSS-EXAMINATION**

24 Q BY MR. LOFLAND: Do you prefer to be called Miss Hennings
25 or Miss Lucas?

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1 A Hennings.

2 Q Ms. Hennings, what did you do to prepare for your
3 testimony today?

4 A Just today? I met with my lawyer -- or with the NLRB
5 lawyer quite a few times.

6 Q How many times.

7 A We met twice and I think we were on the phone three times,
8 I think.

9 Q Okay. Did you meet with anybody else about your testimony
10 other than the NLRB counsel?

11 A There was a girl named Sarah Dunn and I don't know exactly
12 -- she was with the NLRB. And I gave her my deposition.

13 Q Did you speak with anybody from the union regarding your
14 testimony?

15 A No.

16 Q Did you review any documents prior to your testimony?

17 A The union had copies of all of my write ups and I talked
18 to them about them, yes.

19 Q Okay. So who did you talk to at the union?

20 A Sarah --

21 Q Clifthorn?

22 A Clifthorn.

23 Q Okay. And when did those meetings take place?

24 A With Sarah Clifthorn?

25 Q Yes.

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1 A Probably within a couple of weeks after each one of the
2 write ups.

3 Q Okay. Maybe I didn't make myself clear. Did you meet
4 with anybody at the union to discuss how you were to testify
5 today in this hearing?

6 A Oh, no, there was only with a lawyer and with Richard, the
7 NLRB lawyer and then I gave a deposition to Sarah, and other
8 than that there was nobody that went over my testimony.

9 Q And prior to your testimony today, did you review any
10 documents to aid you in your testimony?

11 A With Richard, yes.

12 Q Okay, and what did you review?

13 A The write ups, the deposition.

14 Q All right. You indicated that you are a medical assistant
15 or have been a medical assistant?

16 A Yes.

17 Q And how long ago did you take the course to become a
18 medical assistant?

19 A In 2005.

20 Q And how long was that course?

21 A A year.

22 Q And did you receive a certificate or a diploma or a
23 license. What did you receive?

24 A A certificate and a license.

25 Q The course for one year, was it one year of continuous

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1 training or was it on or off.

2 A It was one year continuous.

3 Q You were in class several hours a day?

4 A Yes, eight hours a day.

5 Q And what is the last time you had a current license or
6 certificate for medical assistant?

7 A For medical assistant -- let's see, I left my 2009 so it
8 was in 2009.

9 Q And you don't have a current one?

10 A No. You have to be under a doctor to get one.

11 Q And you said you also had a NAR or nursing assistant?

12 A Right.

13 Q And is that a license or certificate?

14 A It's a license and we get it with Kitsap Tenant Support
15 Services.

16 Q And how long is the course that it takes to get the
17 nursing assistant?

18 A I don't recall. I really don't recall.

19 Q When you were employed -- when did you first become
20 employed by Kitsap Tenant Support Services?

21 A November of 2009.

22 Q And that was in Port Angeles?

23 A Yes.

24 Q The incident that is reflected in General Counsel's 135,
25 the 3/15/12 record -- I'm not asking you to look at it by

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1 memory. If you want to look at the exhibit say that if you
2 don't have it in front of you.

3 A I have it right here.

4 Q You did in fact loan money to the client?

5 A Yes, I did.

6 Q And at that time you were aware of the policy that you
7 were not to loan money or make gifts to clients, weren't you?

8 A Yes. But I kind of overshot that.

9 Q All right. And in retrospect you understand that it was
10 improper to do so?

11 A Yes.

12 Q When you spoke about that matter with Jamie, Jamie told
13 you that they, the company needed to be careful because of DSH
14 audits that were coming down the pike.

15 A Yes, she said there was a possible upcoming audit.

16 Q And that's the reason they were being extra careful about
17 monies and loaning and those sort of things?

18 A She never went farther with that, so I can't say for sure
19 that's the reason she was saying it, but I inferred that that's
20 the reason.

21 Q It made sense?

22 A Yeah.

23 Q That's correct? Do you know what DHS audits are?

24 A No.

25 Q Referring to General Counsel 136, that's the 4/12/12 late

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1 for shift matter -- and if you need to look at it just wave and
2 let me know, okay?

3 A Okay.

4 Q You were indeed late for the shift?

5 A Yes.

6 Q And you didn't call the office in advance of being late
7 for the shift and let them know, did you?

8 A No, I did not.

9 Q You knew that was what you were supposed to do?

10 A No, we did not follow that protocol.

11 Q All right, so you had as HOH been self-scheduling?

12 A No. No. What we would do when somebody was going to be
13 late is we would call the person affected, that's how we were
14 trained all along to do it. We had been trained by people that
15 -- well, people that had been trained by other people and by
16 other people. They just, I guess they were following their own
17 rules, but we had been trained that if you were going to be a
18 few minutes late that you were to call the person ahead of you,
19 whoever it was, let them know, and then when you got there you
20 reflected it on your time card?

21 Q Who trained you on that? I apologize for interrupting?

22 A Mandy for one, the very first one that trained me. People
23 that routinely did this practice, there was a girl named Nicki
24 that was routinely late and she would call me ahead. You know,
25 just people throughout -- this is, you know, how it was done

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1 and everybody just kind of followed that protocol.

2 Q And what was Nicki's position?

3 A Nicki was a direct service care person.

4 Q All right, has Alan ever trained you, Alan Frey?

5 A No. Not on that situation.

6 Q So what you're telling me is that it was simply the
7 practice within the household that if you were late you would
8 call to tell them that they were late, is that correct?

9 A Uh-huh. I worked many households --

10 Q I'm sorry. I'm going to stop you. You've got to answer
11 yes or no, so that we can get it down.

12 A Oh, right. Yes.

13 Q So I'm going to pick on you if you do what you normally
14 do.

15 A Yes.

16 Q So let me go back. So what you're telling us is that in
17 the practice, in the household it was the practice that if you
18 were going to be late a little bit you'd call the staff who was
19 on shift and let them know?

20 A Right.

21 Q And then if you came in late, you would simply record the
22 actual time you came in on the time card or however you
23 recorded that, is that correct?

24 A Yes. That's what I was trained to do.

25 Q Yeah, but you were trained to do that by other direct

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1 service staff?

2 A Other heads of household, direct service staff, yes.

3 Q Who was the other head of household who trained you to do
4 that?

5 A Tim. And I don't know his last name. He was in the very
6 beginning when I first started working.

7 Q Say the name again.

8 A Tim.

9 Q Tim? T-I-M?

10 A Yes.

11 Q Okay.

12 A Andie Rood, I'm trying to think back. Those were, you
13 know, the ones that I asked most of the questions of when I
14 first started working. They were the most outspoken.

15 Q Did you ever ask Alan Frey what the appropriate procedure
16 was?

17 A I don't recall if I did or not. I don't recall.

18 Q When you went to work for Kitsap Tenant Support Services
19 did you receive handbooks and manuals?

20 A There was handbooks and manuals in the house, but did I
21 receive one in my hand, no.

22 Q All right, you weren't given one, but there were handbooks
23 and manuals in the house?

24 A Uh-huh.

25 Q Is that a yes?

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- 1 A Uh-huh? Oh, I'm sorry, yes.
- 2 Q Okay. And you had access to those?
- 3 A Yes, I did.
- 4 Q And did you read them?
- 5 A Probably -- periodically, or in the beginning I probably
- 6 did, but I probably had you know, how often do you remember
- 7 what you read three years prior?
- 8 Q You didn't review those manuals?
- 9 A We did when serious situations came up, yes, that we
- 10 didn't have an answer to.
- 11 Q Did you review the manuals regarding the procedures coming
- 12 in late to shift?
- 13 A No, sir, I did not. May I say -- go back?
- 14 Q No. I'll ask you a question. No. I'll ask you a
- 15 question if want an answer please. Going back to the
- 16 discussion, exhibit 137, do you have that in front of you?
- 17 A Yes.
- 18 Q And that's dated August 10, 2012?
- 19 A Uh-huh.
- 20 Q Is that a yes?
- 21 A Oh, I'm sorry, yes.
- 22 Q How is that document titled?
- 23 A Letter of direction.
- 24 Q Okay. And the document tells you you are not to be
- 25 scheduling --

1 A Right.

2 Q -- Is that correct?

3 A Uh-huh.

4 Q And I believe your testimony was that you told Alan that
5 you were helping Kathy was scheduling?

6 A Well, I was not scheduling. I was --

7 Q That's not what I asked you, ma'am.

8 A Okay.

9 Q I asked you if your testimony on direct examination was
10 that you told Alan that you were helping Kathy with scheduling?

11 A No. I said I was working with Kathy on scheduling.

12 Q All right. Did you tell Alan Frey that you intended to
13 send the document you were working on to Kathy?

14 A I don't recall if I did or not.

15 Q If you were having difficulties with knowing what the
16 schedule was for your staff in your household because there
17 were changes, there were gaps, it was sort of fluid, why didn't
18 you simply call Kathy Grice and ask her to send you a copy of
19 the current schedule?

20 A I can't tell you. I don't know. I probably -- maybe I
21 was copying it to send to her so that she knew where the spots
22 were, I don't know. But I didn't even think about that.

23 Q Kathy was responsible at that time for scheduling?

24 A Yes.

25 Q Do you know why heads of households were not supposed to

1 be scheduling?

2 A He told me that it was because it was testified or they
3 testified in the NLRB that we didn't schedule and we had a
4 scheduler. We're not schedulers. We had someone that handled
5 that.

6 Q Did they ever tell you why they had -- did Mr. Frey ever
7 tell you why they hired a scheduler?

8 A No. Well, I don't know if he told me or not, but I don't
9 recall the conversation.

10 Q Do you know anybody ever telling you the reason why they
11 hired a scheduler and took it away from the head of households?

12 A No. Nobody -- I don't recall.

13 Q All right.

14 A It could have been, you know, somebody could have told me,
15 but I don't recall it.

16 Q That's fine. Do you know the date or the approximate date
17 upon which they hired a scheduler?

18 A No.

19 Q Did they have a scheduler the entire time you worked at
20 KTSS in the Port Angeles household?

21 A I think so.

22 Q But you don't know?

23 A I'm fairly -- wasn't Amy a scheduler too? I think there
24 was a scheduler the whole time, yes.

25 Q Now Kitsap Tenant Support Services had people who did

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1 quality assurance?

2 A Yes. Yes.

3 Q And those people's jobs were to come to the households and
4 ensure that things were being done correctly?

5 A Yes.

6 Q And Alan Frey would also come and visit households from
7 time to time?

8 A Yes.

9 Q Now if there was a problem, real or perceived in the
10 household, it would be reasonable for the management to spend
11 more time in that household, wouldn't it?

12 A Yes.

13 Q Now as head of household, you were responsible for
14 ensuring that the medication charts were done correctly,
15 weren't you?

16 A Yes.

17 Q And there had come a time when you had gotten laxed in the
18 performance of your job, hadn't it?

19 A I had more errors than normal, yes.

20 Q And you had become laxed?

21 A I wouldn't say laxed.

22 Q How about if we used the word you'd gotten too relaxed
23 about enforcing the oncoming staff checking their meds?

24 A I've gotten worn out, yeah.

25 Q Pardon?

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- 1 A Nothing.
- 2 Q You said had gotten worn out?
- 3 A I was constantly being scrutinized, yes.
- 4 Q You were worn out by the job you were doing?
- 5 A No, not at all.
- 6 Q You were being scrutinized.
- 7 A Just stressed. Uh-huh.
- 8 Q And there was something wrong with management scrutinizing
- 9 to make sure that you were doing your job and making sure that
- 10 the medications were correctly done? There was something wrong
- 11 with that?
- 12 A No, there was nothing wrong with that.
- 13 Q The situation that involved you and your sister, about
- 14 being late and picking up a medication. The medication that
- 15 she had stopped to pick up on the way was not a medication for
- 16 the client was it?
- 17 A No, it was not.
- 18 Q It was a prescription for you?
- 19 A Yes, it was.
- 20 Q So you -- did you tell her that it was alright for her to
- 21 be last?
- 22 A She, -- I asked her to pick it up for me, yes.
- 23 Q Knowing that by doing so she would be late?
- 24 A No, not necessarily, but she ended up being late because
- 25 of a tie up at the pharmacy.

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1 A Yes. But I can explain that.

2 Q All right, meaning I understand, not to please do so. I
3 believe in your testimony on your direct examination you said
4 there was a protocol for leaving a client?

5 A A protocol? No, I don't remember saying protocol. It's
6 what we did to assure the client's safety, and I'm fairly
7 certain that's what the office -- you know, we had to make sure
8 that there was people that understood that the client was going
9 to be there, that they were going to be in their care and you
10 know, make sure everything was safe.

11 Q And do you recall whether that protocol is in writing?

12 A No, I don't.

13 Q You say that at some point in time, a union representative
14 came to your house and asked you to sign an authorization card?

15 A Yes.

16 Q And do you recall the date that was?

17 A Not the exact date. It was sometime in October of 2011.

18 Q Can you tell me whether it is early or late in October?
19 And if you can't, that's fine.

20 A I can't.

21 Q Just to try to help you, was it anywhere around Halloween?
22 Does that put --

23 A It might have been getting closer to that, yeah. It seems
24 like that was -- you know, it was kind of around that time
25 period.

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1 Q So to your best sense, it was late October?

2 A Probably.

3 Q And when the union representative came to you and asked
4 you to sign the card, did that person tell you that your
5 support, your signing the authorization card would not be
6 revealed to the employer?

7 A No.

8 Q Did they tell you that the card was secret?

9 A No. I just signed it.

10 Q Did you read the card?

11 A I might have, but I don't remember right now. I just
12 signed it because I've always been a union supporter.

13 Q Do you have any knowledge of whether that union
14 representative or any other union representative revealed to
15 the employer that you had signed a card?

16 A No, I don't.

17 Q You indicated that there was a flier that was sent and
18 your picture was on it?

19 A Yes.

20 Q Did you have anything to do with sending out or
21 distributing that flier?

22 A No.

23 Q Do you have any personal knowledge as to when that flier
24 was sent or distributed?

25 A Dates, dates, dates ... I want to say November of the same

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1 year. I don't think it was very long after they contacted me.

2 We had a couple of meetings. Maybe December. I don't know.

3 Q Is your answer you don't know?

4 A I don't recall. I don't want to give you an answer that

5 wouldn't be correct.

6 Q All right. In the matter, and I'm just going to try to

7 put your focus onto it, where your daughter locked keys in a

8 car and couldn't get in, okay?

9 A Uh-huh.

10 Q It's not important for this question the date, because we

11 can pick that up in the record. After you had gone to your --

12 to help your daughter get into her house or locate the keys,

13 whatever you did, why didn't you go back to the party to

14 supervise the clients?

15 A Well, because the first client -- one client had already

16 been picked up by her mother to go shopping, so she was already

17 gone, that client was already gone. The second client's mother

18 and sister were there to pick him up and they were going to be

19 leaving soon so I figured I'd go back to the house because I

20 had another -- the third client got off work at 1:00 and would

21 be home on the bus at 1:30, and I had projects to do at the

22 house, so I wanted to get back to the house and start working.

23 Q How long did the party last that day?

24 A I don't know. My part in it, it was done when the second

25 client, I mean when the clients were gone. So I have no idea.

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1 acceptable?

2 A That's -- because it had happened before, during paperwork
3 meetings, and when I asked Jamie, she said donations were okay.

4 Q Okay.

5 A Or when she talked about it.

6 Q In that circumstance -- tell me in that circumstance what
7 the difference between a donation and gift and loan would be?

8 A A loan is when you ask for repayment back. A gift, I
9 would think is a donation too.

10 MR. LOFLAND: I believe that's all I have.

11 JUDGE POLLACK: Thank you.

12 MR. LOFLAND: Oh, excuse me, if I may, I apologize.

13 JUDGE POLLACK: Go ahead.

14 MR. LOFLAND: At the risk of incurring the Judge's wrath,
15 I'll say I'll be brief, because lawyers always say that but
16 never really are. You don't have to laugh so hard at me with
17 that.

18 THE WITNESS: It's the menopause brain, I'll tell you.
19 Meno-ma'am.

20 Q BY MR. LOFLAND: You were demoted from head of household
21 to direct service staff, correct?

22 A Yes.

23 Q And did you remain in the same household?

24 A No.

25 Q What was the household that you were in at the time you

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1 were demoted?

2 A 7th Street House.

3 Q And when you were demoted, what household did you move to?

4 A Christine.

5 Q And how far distance are the two approximately?

6 A Four or five blocks.

7 Q And when you went to Christine House, what shift did you
8 work?

9 A 7:00 to 3:00.

10 Q 7:00 a.m. to 3:00 p.m.

11 A Uh-huh.

12 Q Is that a yes?

13 A Sorry, yes.

14 Q And then did there come a time when you requested to go to
15 graveyard shift?

16 A Yes.

17 Q And when was that?

18 A That --

19 Q Best guess.

20 A Oh, geeze. I have menopause brain. Three months ago?

21 Three months ago maybe. Just recently.

22 Q The records will show that eventually, but your best
23 memory is about three months ago?

24 A About three months ago.

25 Q And still at the Christine House?

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1 A Yes.

2 Q Just so we're clear, what is the graveyard shift?

3 A It's 11:00 to 7:00.

4 Q And that was your request to move to that shift?

5 A Yes.

6 Q Thank you.

7 MR. LOFLAND: I have nothing further. See, I tried to be
8 brief.

9 JUDGE POLLACK: I appreciate that.

10 MR. FIOL: I have a few questions, Ms. Hennings.

11 **REDIRECT EXAMINATION**

12 Q BY MR. FIOL: You testified to a question that was asked
13 of you that Nicki was routinely late. But there was no last
14 name?

15 A Nicki, Nicki, Nicki.

16 Q If you don't remember that's fine. Where does she work?

17 A She doesn't work with KTSS any longer.

18 Q No, no, when you said Nicki was routinely late, where was
19 she working?

20 A At Chase Street Apartments.

21 Q Is that where you were at?

22 A That's where I started at, yeah.

23 Q I see. And when was that?

24 A When was that?

25 Q Yeah.

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1 A 2009.

2 Q How long did you stay at that department?

3 A I moved from there in 2010 when they moved all the clients
4 into new homes.

5 Q And that's when Nicki was there?

6 A She was at Chase Street in 2009. Yeah.

7 Q Okay. And to your knowledge, you say routinely late. How
8 many times on average was she late?

9 A Pretty much almost every day.

10 Q And do your knowledge did she ever receive the write up
11 that you received?

12 A No.

13 Q Okay. You mentioned Tim, last name unknown as head of
14 household.

15 A It was McDonald. I think it was McDonald.

16 Q Okay. And Andie Rood, Roud?

17 A Rood.

18 Q Rood? Also a head of household --

19 A Uh-huh

20 Q -- that they were the ones that trained you?

21 A Well, those were the ones that -- Tim was supposed to
22 train me but he didn't have time so Mandy did it. But those
23 were the ones I asked all the questions of, you know.

24 Q And what was the training -- let's talk about Andie Rood.

25 She trained you as well?

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1 A No, she didn't train me, I just -- every time I had a
2 question I'd call her and ask her because she was used to
3 working with -- I mean she'd been working with them for a long
4 time.

5 Q I see. And were those questions dealing with coming in
6 late?

7 A I had asked them about, yeah, coming in late.

8 Q And as you understand it, if you came in late you just
9 corrected it on the time sheet?

10 A I think that was my impression, yeah.

11 Q And do you know if Andie Rood was ever late?

12 A Well, I'm sure, yeah.

13 Q I'll move on. You wanted to explain something when Mr.
14 Lofland asked you about telling Alan something different. You
15 had to give a yes or no answer and you wanted to explain. Do
16 you recall now what that explanation was that you wanted to
17 give us?

18 A I don't remember the whole question. Can you repeat the
19 question?

20 Q I have no way to repeat the question, but the question had
21 to do with it initiated with you and your sister Teresa and
22 changing a story or saying something different and then he
23 followed up on that, and you wanted to explain?

24 A Oh. Oh. Yes. My -- when this all came about, he --
25 Alan, you're very intimidating when you walk in. So, a lot of

1 A Yeah.

2 Q And those were given to --

3 A Sarah Dunn.

4 Q Sarah Dunn? And have you met with her at any time since
5 the end of May of this year?

6 A No.

7 Q So you didn't talk to her about this hearing?

8 A No.

9 Q That was part of the investigation?

10 A Yeah, that was part of the investigation.

11 Q And then -- okay. You talked about when people were a few
12 minutes late to work and they would just call to the head of
13 household to the house and say that and then record that on
14 their time sheets, correct?

15 A Right.

16 Q Was there ever any issue about that to your knowledge
17 where there --

18 A No, it was common practice. It's the way we handled
19 things. We were very remote from Bremerton.

20 Q For the record, you talked about an Andie Rood. Can you
21 spell the last name?

22 A R-O-O-D.

23 Q Okay. When Alan Frey came to the home and thought you
24 were scheduling, did you offer to show him the papers to show
25 you weren't scheduling or did you do anything to explain?

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1 A Well, I worded -- I probably worded things wrong, because
2 it made me very nervous when he immediately was on me about the
3 scheduling, but no, I never offered to show him the papers.
4 You know, I was just sitting right there in front of them. He
5 could have come over. I mean, I wouldn't have had a problem
6 with him coming over and looking at them.

7 Q Mr. Lofland asked you a question about whether you had
8 ever had -- you talked about an issue with your sister and you
9 and where you had different stories that we just talked about a
10 moment ago, and then Mr. Lofland was there another time when
11 you had difficulty, or an issue, with Mr. Frey about different
12 versions or a story you told him, and you asked if you could
13 get into that, and he said no. Why don't you tell us what you
14 were going to tell us?

15 A Well, like I said, when -- during this whole thing, things
16 escalated and it got very nerve-wracking. Every time he would
17 come into the house I was always nervous. Did I have
18 everything done, was I going to get in trouble for something, I
19 was very nervous. And so when he came into the house, things
20 didn't get worded right and then he would confront me on my
21 wording and I would change, I would try and explain my wording,
22 but in his eyes maybe I was recanting stories or changing
23 stories, but I wasn't trying to do that, I'm trying to explain
24 myself to let him know, no, I was not scheduling, or these were
25 the things I was doing. I just -- I just got so nervous and

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1 I'm probably doing it now. You just get so nervous because
2 things were going on all the time that you would say things not
3 exactly right.

4 Q Can you think of any particular cases where that happened,
5 or was that just a general feeling as we sit here today?

6 A Oh, there was a time that I was in -- they came in -- both
7 he and Mike came into the room and my sister and I were sitting
8 on the couch -- she worked the shift right after me and we had
9 been busy looking for a client's belongings because he was
10 upset about it so we were a little over time, and then we were
11 sitting discussing another client. When he came in, the stance
12 was already this real aggressive, coming in, and you know, just
13 walking in, and I said to him --

14 Q I'm sorry to interrupt you, who was aggressive?

15 A Alan.

16 Q Okay. Go ahead with your story.

17 A It's just his nature.

18 Q Yeah.

19 A But anyways, I put my hand up and I said, "Don't come too
20 close, I'm sick." I think he took it as I was sick with
21 something that was contagious. I had a horrible migraine and
22 that was the day that the medication issue came up, and I was
23 nauseated and him coming too fast at me was making me sick.
24 So, and that's the reason my sister stopped and got the
25 prescription was because I'm sick.

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1 Q Was this an emotional time for you?

2 A Extremely. The whole thing was extremely emotional,
3 because I like -- you know, I care about everybody and I care
4 about Alan. I don't like doing this.

5 Q What made you emotional?

6 A Emotional when I get teary?

7 Q Well, you said this was an emotional time for you, what
8 made it so emotional?

9 A That we went from a -- [crying]

10 Q You don't have to answer any further.

11 A No, we went from a relationship of trust, and we were good
12 together, we had a great team together and Alan was great with
13 us to -- I don't know what happened.

14 Q Okay. That's it. Thank you, I'm sorry to put you through
15 that. Maybe one last question or two here. When you were
16 demoted from head of household to another house, were there
17 other houses in the Port Angeles area other than, was it
18 Christine House and 7th Street House, were there other houses?

19 A Yeah, there's five houses all together.

20 Q Okay. Did you discuss with Alan if you were going to be
21 demoted where you would like to go or not like to go?

22 A Yes.

23 Q Was that before you were demoted to another house?

24 A No, during the meeting of the demotion, I explained to him
25 that I didn't want to be at Christine because my ex-husband

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1 runs it.

2 Q Okay. And was that where you were sent?

3 A Yes.

4 MR. JENSEN: Nothing further.

5 MR. LOFLAND: I have a couple more questions.

6 JUDGE POLLACK: Go ahead.

7 RECROSS-EXAMINATION

8 Q BY MR. LOFLAND: You're testimony was that when Alan would
9 come to visit the house he would ask you questions, correct?

10 A Sometimes. Sometimes he would just start talking. So not
11 all the time.

12 Q And that when that happened, you would be nervous and you
13 would be upset and you would just throw something out is the
14 term of the answer.

15 A See, another one of those word things. I would answer him
16 as best as I could, and sometimes you know, my terminology
17 wasn't great. I was stumbling over myself or whatever, because
18 it made me nervous when he came in.

19 Q Okay. And so you'd give one statement to him and then at
20 a later time you would come back and try to correct that?

21 A Yes.

22 Q And your statement is that when you were doing that, you
23 were doing that because you were upset and you were confused?

24 A Upset and nervous.

25 Q Nervous. I'm sorry. Upset and nervous, thank you. And

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1 it wasn't an intent to be giving different versions or an
2 attempt to mislead him?

3 A No. No.

4 Q It was just because you were upset and nervous, correct?

5 A Yes.

6 Q Then later when you corrected that it would sometimes come
7 out entirely differently than what you had said before, is that
8 correct?

9 A Yeah, kind -- well, no. Not entirely differently. No.

10 Q Somewhat differently?

11 A Somewhat differently.

12 Q Sometimes a lot differently?

13 A No. Not a lot.

14 Q Okay. And so when a person in a supervisory or managerial
15 position talks to an employee and they get two different
16 versions of the same thing, it would be reasonable for them to
17 think that perhaps the person is giving different accounts or
18 changing their story, wouldn't it?

19 A Oh, well, yes. I would say so, yes.

20 Q Now I believe you told Counsel, because I would never ask
21 this question, but he made the mistake of asking your age. So
22 it's his fault that it is in the record, not mine. But I
23 believe you said you're 54 years old?

24 A 56.

25 Q 56? And you had a nursing assistant license?

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1 A Doing good.

2 Q Good. So did there come a time when you worked for the
3 Respondent in this case, Kitsap Tenant Support Services?

4 A Yes.

5 Q Okay. And when were you first hired by KTSS?

6 A I was hired in July 2008.

7 Q Okay. And into what position were you originally hired by
8 KTSS?

9 A Direct support staff.

10 Q What was your work history prior to going to work for
11 KTSS?

12 A My only other job before KTSS I worked at Burger King.

13 Q Okay. So when was this that you were originally hired?

14 A I was hired in July 2008, the month after I graduated high
15 school.

16 Q Okay. So how old were you at the time?

17 A 18.

18 Q What program did you initially work in when you were first
19 hired?

20 A Intensive Tenant Support, ITS.

21 Q And what was that program? Can you describe how that
22 program operated?

23 A That program operated -- it was full care. The clients
24 needed full care on every aspect of their life.

25 Q Can you give some examples of that kind of care?

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1 A Examples would be showering, eating, housework, shopping
2 done for them, mobility some of them.

3 Q And you provided all of that care in your position?

4 A Yes.

5 Q Okay. What training and other qualifications did that job
6 require?

7 A Training was first aid, CPR, a food handlers permit, a
8 nursing assistant registered license so I can pass medications
9 and then 32 hours of on-the-job training.

10 Q Okay. And did you come in with this experience, or did
11 KTSS provide it?

12 A KTSS helped provide it.

13 Q Okay. So you mentioned nurse assistant registration
14 license you had. What is that license exactly?

15 A That license you fill out a form and then mail and then it
16 allows you to be able to able to pass medications, along with a
17 nurse delegation class that I had to take too.

18 Q Okay. So let's get back to your duties as a direct
19 support staff at KTSS. Where did the clients you provided care
20 for live?

21 A The clients lived in their own homes in the community.

22 Q Okay. Did you work in more than one client home or just
23 one?

24 A I worked in many. Most day I was what they called the
25 float. So I went wherever I was needed.

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1 Q Okay. So did the float, did that refer to a particular
2 shift or was that just a term for going back and forth between?

3 A That was just for going to different households. I wasn't
4 just assigned to one household.

5 Q Okay. And what age were most of your clients, if there
6 was any common age?

7 A That I'm not sure. Most of them were older age but it
8 varied.

9 Q Okay. Did any of them have any special needs that you had
10 to --

11 A Every single client had a physical and mental disability
12 in some way.

13 Q Okay. So what originally made you want to get into this
14 kind of work?

15 A I originally got into this field of work because of my
16 mother working for this company, KTSS, for 16 years total, and
17 I was always just raised around people who needed more help
18 than others, and I just took a liking to it, I was good with
19 helping people and it's what I wanted to do.

20 Q So, you said you were the swing -- I'm sorry, the float
21 shift, float person. So you worked in more than one house?

22 A Yes.

23 Q Okay. Did other staff also work in those houses with you?

24 A Yes.

25 Q Did all of the staff you worked with in those houses have

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1 the same direct service title that you had or did they have
2 other titles?

3 A The only one that had another title would be the head of
4 household who was the one in charge.

5 Q Okay. So you said head of household is the one in charge.
6 What kind of extra duties or what were the duties of the head
7 of household?

8 A The duties of the head of household would be all the
9 paperwork including narratives, budgeting their grocery
10 accounts for grocery shopping, doing the shopping for the
11 household, scheduling doctor's appointments, ordering
12 medications.

13 Q Okay. So scheduling doctor's appointments. Did you as a
14 direct service provider ever schedule doctor's appointments?

15 A No.

16 Q Did you ever transport clients yourself as a direct
17 service provider?

18 A I did not.

19 Q And were there any particular requirements to transport
20 clients, whether to doctors appointments or to other, to the
21 grocery store or for any purpose?

22 A The requirement was to have the insurance that the company
23 wanted you to have, which was full insurance on your own
24 vehicle, or a license to drive the transit bus or van that they
25 have.

1 Q Did you have either the license or the insurance?

2 A No.

3 Q Were you required by KTSS in your position to have either
4 of those, the license or insurance?

5 A No. They recommended it, it was not mandatory.

6 Q Okay. Let me direct you a little later on, to the year
7 2011. Do you recall ever becoming aware of a union organizing
8 campaign in that year?

9 A Yes.

10 Q Okay. Around when did you originally become aware of that
11 union campaign?

12 A I believe it was around fall of 2011.

13 Q Okay. And what was your first contact with the union
14 directly?

15 A My first contact was when a representative came to my
16 house and I signed a card saying that I was supportive of the
17 union.

18 Q Do you remember a company meeting about the union
19 happening around that same time?

20 A Through KTSS?

21 Q Uh-huh.

22 A Yes. There was meeting held by -- it was mandatory that
23 we go in and Mike Closser hired someone to talk about why a
24 union would not be a good idea for the company.

25 Q Okay. And just to jump back a minute and to clarify for

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1 the record, around when, if we can narrow down to a month, when
2 was this meeting held, if you recall?

3 A I don't recall.

4 Q Okay. But sometime around fall 2011?

5 A I believe so.

6 Q Okay. Where was this meeting held?

7 A This meeting was held in the KTSS office.

8 Q Okay. And was it in a particular room in the office?

9 A I can't say exactly which room it was in, but it was in a
10 room inside of the office.

11 Q Okay. Who else was at the meeting?

12 A Other employees and then the instructor and then Mike
13 introduced the class and then he left out of the room.

14 Q When you say Mike, who is Mike?

15 A Mike Closser, the owner of KTSS.

16 Q Okay. And this instructor, so how did the instructor come
17 to be at the meeting to your knowledge?

18 A To my knowledge, the KTSS paid for him to come and teach,
19 explain to us employees why it wouldn't be a good idea for the
20 union.

21 Q Okay. So moving on, prior to this time period in late
22 fall 2011, had you ever been warned or disciplined by KTSS for
23 any reason?

24 A No.

25 Q Okay. To that point had you ever been put on

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1 administrative leave during your tenure with KTSS?

2 A No.

3 Q When was the first time you were -- have you ever been
4 disciplined by KTSS?

5 A I was disciplined by KTSS on December 23rd of 2011.

6 Q Okay. Was that the first time you were disciplined?

7 A Yes.

8 Q What -- why were you disciplined that day?

9 A I was informed that I was being disciplined that day for
10 an incident that happened on December 20th, of not following
11 protocol on taking a client to the doctor in a timely manner.

12 Q Okay. So let's jump back a bit. So you said that this
13 incident occurred on December 20th of that week, of 2011.

14 A Yes.

15 Q Were you working that day?

16 A Yes.

17 Q In what house were you working?

18 A It was in 9th Street, Bremerton, and all male household.

19 Q And so set the scene for us a little. How did the
20 incident occur that day, what exactly happened?

21 A That day on December 20th, 2011 I arrived at work around
22 7:00.

23 Q Is that 7:00 a.m.?

24 A 7:00 a.m., and I was in charge of giving this client his
25 morning shower, gave it around 8:30ish and I noticed a bruise

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1 and scratch on his body.

2 Q Okay. Let's stop right there. Can you describe what the
3 bruise scratch appeared -- what it looked like?

4 A Oh, he got bumped on something or someone's nail scratched
5 him. It was small.

6 Q About how large would you say the bruise and scratch were?

7 A No more than a quarter size.

8 Q A quarter? Okay.

9 A Maybe.

10 Q Okay. So you see the bruise and scratch while showering
11 the client. What did you do next?

12 A I called my other co-worker who was there with me in to
13 look at the bruise and scratch.

14 Q Who was this other co-worker?

15 A Hannah Gates.

16 Q Okay. And what's her title? Her position with the
17 company?

18 A It would be the same as mine, direct support staff.

19 Q Okay. So you call Hannah in. Did you examine the scratch
20 further?

21 A Yeah. She just looked at it also along with me and they
22 looked new, they weren't old. And then also the client, the
23 client also said he had a stomachache.

24 Q At this point, after describing his stomachache and you
25 noticing this bruise and scratch, did the client ask you to

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1 take him to the doctor?

2 A No.

3 Q Okay. To your knowledge, did you overhear the client
4 asking Hannah to take him to the doctor?

5 A No.

6 Q To your eye, when you examined the bruise and scratch and
7 heard about his complaints about a stomachache, other than that
8 comment, were there signs that the client was seriously ill?

9 A No. After he said he had a stomachache, we reviewed his
10 bowel movement charts. He had had regular bowel movements.
11 There was no diarrhea, we checked his temperature, there was no
12 temperature. He had eaten breakfast that morning, no
13 complaints. So there was no indication there anything wrong.

14 Q Okay. So what would you normally do? Had you experienced
15 this type of situation before with any client of KTSS?

16 A Yes.

17 Q So what would you normally do when a client complained of
18 being sick with a stomachache or something of that sort?

19 A Do exactly what I did and check to see if there would be
20 any other symptoms or causes of the bellyache and then inform
21 the head of household of the problem.

22 Q Okay. And who was your head of household at that time?

23 A Jessica Lanzoratta.

24 Q Okay, so you did inform Jessica Lanzoratta?

25 A I did not personally, Hannah Gates did that.

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1 Q Okay. Would you ever in your experience at KTSS
2 personally call to schedule a doctor's appointment in this
3 circumstance?

4 A No.

5 Q Okay. Who would do that if it was necessary?

6 A The head of household.

7 Q Okay. Could you have driven the client to the doctor
8 yourself at that point had he asked?

9 A No.

10 Q And remind us why that is.

11 A This client was in a wheelchair and did not walk and I did
12 not have the correct insurance for my own vehicle and I did not
13 have van license to drive the company van.

14 Q What about Hannah that day driven the client to the
15 doctor?

16 A No.

17 Q Okay. Were there any other staff working in the home at
18 the time?

19 A No.

20 Q It was just the two of you?

21 A Yes.

22 Q How many times while working for KTSS have you had a sick
23 client before this incident? I mean approximate.

24 A There's been occasions where they get sick. I can't count
25 exactly how many times.

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1 Q But you've experienced it before?

2 A Yes.

3 Q And did you do anything differently this time than you had
4 in the past?

5 A No.

6 Q All right, so you testified that Hannah called your head
7 of household to report the incident.

8 A Yes.

9 Q What happened next.

10 A I finished the client morning hygiene, which was
11 showering, shaving, brushing his teeth and then Hannah was on
12 the phone but -- and then we got him dressed and we decided to
13 put him in comfortable clothing because he said he had a
14 stomachache so comfortable pajama pants, loose t-shirt.

15 Q Did you record the incident?

16 A I did not myself. Hannah Gates said she did.

17 Q Okay.

18 A In the Red Book, which is where all doctor documentation
19 is, medication documentation.

20 Q Okay. So you put the client down to sleep in comfortable
21 clothes. What happened next?

22 A Hannah Gates informed me that --

23 MR. LOFLAND: to which I object as hearsay

24 JUDGE POLLACK: It's not being offered for the truth of
25 the matter. Go ahead.

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1 Q BY MS. DeVLEMING: Did you hear from Jessica again?

2 A Jessica called to say that Alan and Mieke were on their
3 way to the client household.

4 Q Okay. Who is Mieke? What's her full name, do you
5 remember?

6 A No, I don't remember.

7 Q Do you know what her title is or anything? What's her
8 role in the company?

9 A I forget her exact title.

10 Q Is she in management?

11 A Yes.

12 Q Okay. Who is Alan?

13 A Alan Frey is the -- I forget his exact title now too, but
14 he helps run the company.

15 Q Okay. So was it usual for Mieke and Alan to come to your
16 household?

17 A No.

18 Q Had that happened before?

19 A They have made visits, but very rarely.

20 Q Okay.

21 A Mieke more so than Alan.

22 Q Okay. In the circumstances that Mieke came, can you
23 describe what type of circumstances would need to be present
24 for Mieke to come?

25 A She had done safety house checks before checking the water

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1 temperatures and the fire alarms. I've seen her there for
2 those checks. And she's come to check on a different injury
3 that I know of.

4 Q Okay. What was that injury?

5 A It was a fracture, I believe, from the same client.

6 Q Okay. And what happened in that incident when she came to
7 check on the fracture?

8 A She just came briefly to make sure he was doing okay and
9 to see it.

10 Q And what was --

11 A -- And we talked about how we transfer him.

12 Q Okay. And what was the result of that incident? Was
13 anyone disciplined?

14 A As far as I know, no one was disciplined.

15 Q Okay. And other than this fracture, were there any other
16 incidents where managers came to check on injuries or illnesses
17 of clients?

18 A No.

19 Q Okay. So did Mieke and Alan come that day, the day of the
20 incident?

21 A Yes.

22 Q Before they arrived, had the client to this point asked
23 you to take him to the doctor?

24 A No.

25 Q Did you ever hear him ask Hannah at any point in that

1 period to take him to the doctor?

2 A No.

3 Q So around what time did Alan and Mieke arrive that day?

4 A Around 10:00ish.

5 Q Is that A.M.?

6 A Yes.

7 Q So what happened first when they arrived?

8 A Hannah was busy doing something and then Alan went back to
9 the back room to visit and to check on the client. I went back
10 there with him while Hannah and Mieke stayed in the living
11 room/kitchen area.

12 Q Okay. Did Alan and the client speak?

13 A Yes.

14 Q What did they talk about?

15 A Alan asked if he could look at the bruise and scratch on
16 the client, and then -- and he did. He viewed it. And then
17 the client then told Alan that he had a stomachache and wanted
18 to go to the doctor.

19 Q Okay. Did Alan respond when the client said that?

20 A I don't recall exactly what Alan said.

21 Q Did you respond when the client asked to go to the doctor?
22 Was there a conversation?

23 A Well, the conversation -- there was probably some words
24 said in between, but it was Alan asked me why I didn't take him
25 to the doctors.

1 Q Okay. And what did you say?

2 A And I said because we didn't have the staff to take him to
3 the doctors.

4 Q What did you mean by that?

5 A I was meaning at that time there was me nor Hannah could
6 take him.

7 Q Okay. Because of --

8 A From not having the correct license or insurance.

9 Q Okay. Did you say anything else at that point to Alan?

10 A No.

11 Q Okay. How did Alan react when you said you didn't have
12 the staff?

13 A Alan said there was two of us there, and then there was
14 also -- he also stated there was so many people that worked in
15 this company and there's someone there that could take him to
16 the doctors.

17 Q Okay. And did you respond?

18 A And I agreed and Alan told me I could call Kathy Grice who
19 worked in the office in management and she could help arrange
20 transportation for the client.

21 Q Okay. How did you respond to that suggestion?

22 A I said okay.

23 Q What happened next? What did Alan do next?

24 A Also when Alan was in the room, he, after looking at the
25 bruise and scratch, he thought that maybe the bruise and

1 scratch came from the client's wheelchair.

2 Q Okay.

3 A So Alan himself sat in the wheelchair and determined
4 that's where he thought the client got the marks from.

5 Q Okay. Was there a visible problem with the wheelchair?

6 A No.

7 JUDGE POLLACK: I didn't hear the answer.

8 THE WITNESS: No.

9 Q BY MS. DeVLEMING: Make sure you make an affirmative yes
10 or no just for the record. So what was Alan's response to
11 finding this problem with the wheelchair?

12 A He mentioned that there was a sharp edge, that he could
13 feel a sharp edge and that's where he thought the marks came
14 from, and to tape it.

15 Q Okay. Did he say anything else?

16 A No.

17 Q What happened next?

18 A We left the client's bedroom and went into the kitchen.

19 Q Okay. Was anyone in the kitchen at the time?

20 A Hannah Gates and Mieke.

21 Q Okay. And was there a conversation between the four of
22 you in the kitchen?

23 A Yes. Mieke had already talked to Jessica, the head of
24 household, over the phone, and they worked out an arrangement
25 for myself to leave the guy's apartment or house and go over to

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1 where Jessica was working at an all female household, so
2 Jessica could then drive back to the male household and take
3 the client to the doctors.

4 Q Okay.

5 A And arrangements got all worked out.

6 Q Okay. And so did you agree to this plan?

7 A Yes.

8 Q Did you ever call the office, call Kathy Grice per Alan's
9 suggestion?

10 A No, because arrangements got worked out without me needing
11 to call Kathy.

12 Q Okay. What happened next?

13 A Mieke and Alan left the house and myself and Hannah we --
14 I stayed there for just a little bit to help her toilet the
15 three residents, change them, and prepare their lunch and
16 afternoon medications.

17 Q And then what?

18 A And then I left myself to go over to where Jessica was
19 working at an all female household, which was across town.

20 Q Okay. Where did you work the rest of the week?

21 A From the afternoon on the 20th and then the 21st, the 22nd,
22 and 23rd, I finished my whole shifts at the ladies house.

23 Q Okay. Why did you do that?

24 A I was told to go there on the 20th to relieve Jessica, and
25 then after that I was told to continue my work week at the

1 ladies household so Jessica could go back and forth between the
2 two.

3 Q Okay. Was it unusual for you to be instructed to work at
4 a different house?

5 A No.

6 Q Did you ever call the wheelchair company?

7 A I did not myself due to the fact that I left the household
8 on the 20th and I had not returned back to the household and
9 Jessica said she was going to.

10 MR. LOFLAND: Objection. Hearsay.

11 MS. DeVLEMING: Doesn't go to the truth of the matter.
12 She's relying on Jessica's assertion that she would do it.

13 MR. LOFLAND: For what purpose though, it doesn't prove
14 anything that mattered.

15 JUDGE POLLACK: Move on.

16 MS. DeVLEMING: Okay.

17 Q BY MS. DeVLEMING: Did you ever fix the wheelchair
18 yourself?

19 A No.

20 Q And why was that?

21 A First off, we were not ever trained to fix medical
22 equipment and that would be the company, that would be Tim's
23 Home Medical Supplies, and for two I was told to tape it but
24 was given no tape or what kind of tape to even tape a spot on
25 the wheelchair.

1 Q Where was the wheelchair located?

2 A At the time that it was looked at by Alan it was in the
3 residents -- or the client's bedroom.

4 Q In which client's bedroom? Which household?

5 A The man's household.

6 Q And where were you working that week?

7 A On the 20th in the morning I was at the man's household.

8 The rest of the week I was at the ladies household.

9 Q Okay. So which household did you work in the next week,
10 if any?

11 A On the 23rd I was put on administrative leave and I did not
12 return back to work.

13 Q So what happened on the 23rd? How did you learn about your
14 administrative leave?

15 A It was after work. I got off work at 3 o'clock p.m. and
16 around 3:30 p.m. I got a phone call from Kathy Grice in the
17 office stating that I was being put on nonpaid administrative
18 leave for not following protocol, not taking the client to the
19 doctors and not fixing the wheelchair when told to do so.

20 Q Okay. And you were on administrative leave, not
21 terminated?

22 A Correct.

23 Q Was -- what was the purpose of being on administrative
24 leave? Did she explain?

25 A So there could be an investigation.

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1 Q What kind of investigation was she referring to if you
2 know? Did she explain?

3 A No.

4 Q Okay.

5 A Just an investigation of what happened.

6 Q Okay. Did you respond to Kathy when she told you this,
7 when she told you that you were on administrative leave?

8 A Well, I asked why and she explained why and that was about
9 it.

10 Q Okay. Did you -- was anything else said on this
11 conversation?

12 A I don't recall.

13 Q About how long did that phone conversation last?

14 A It was really short. A couple minutes.

15 Q Did you speak with anyone else at KTSS after that point?

16 A I had called asking -- I called and I asked for a written
17 copy of protocol.

18 Q Why did you ask for that?

19 A Because I was told I wasn't following protocol but I had
20 never seen in writing a protocol, it was just protocol was what
21 we'd been taught to do.

22 Q Who did you call to ask for the protocol?

23 A I talked with Kathy Grice.

24 MR. LOFLAND: I'm sorry, say the name again?

25 THE WITNESS: Kathy Grice.

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1 MR. LOFLAND: Thank you.

2 Q BY MS. DeVLEMING: Around when did you make that phone
3 call?

4 A It was a few days after the incident of me getting put on
5 administrative leave. I don't recall an exact date.

6 Q Did Kathy send the document you requested?

7 A No. I did end up receiving a written letter of why I was
8 put on administrative leave. I believe I got that at the very
9 end of December, but I never received a written copy of
10 protocol in an emergency situation or a nonemergency situation.

11 **(General Counsel Exhibit 149 marked for identification)**

12 MR. LOFLAND: I will stipulate to the admissibility.

13 JUDGE POLLACK: Okay. I'll receive General Counsel's 149.

14 **(General Counsel Exhibit 149 received into evidence)**

15 MS. DeVLEMING: I'll give counsel a moment to look at the
16 document.

17 [Pause]

18 Q BY MS. DeVLEMING: Ms. Sale, I've placed in front of you a
19 document numbered GC-149. Is this the letter you were just
20 referring to?

21 A Yes.

22 Q In the first paragraph there, if you'll look, it says that
23 the client had requested several times to be taken to the
24 doctor. Is that accurate?

25 A No. He -- the client requested a couple times to be taken

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1 to the doctor to Alan, but not to myself.

2 Q Okay. And you were in the room when that happened, the
3 first time that happened?

4 A Yes.

5 Q And then I think it is on the second page of the document
6 it asks for a response by January 13th, I believe. Did you
7 respond?

8 A Yes.

9 Q How did you respond?

10 A I responded by a letter that I personally dropped off to
11 Alan at the KTSS office.

12 Q Okay. Around when did you drop off that letter?

13 A I don't know the exact -- a couple days after receiving my
14 letter. A few days.

15 **(General Counsel Exhibit 150 marked for identification)**

16 MR. JENSEN: Can I have just a moment to read this?

17 MS. DEVLEMING: Sure.

18 [Pause]

19 Q BY MS. DEVLEMING: Okay, so I've handed the witness what's
20 been marked as General Counsel's exhibit number 150. Ms. Sale,
21 have you taken a moment to glance at that document?

22 A Yes.

23 Q Do you recognize it?

24 A Yes.

25 Q Can you tell us what it is?

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1 A This is my letter to Alan Frey responding to my letter
2 from Alan saying why I'm put on administrative leave, and my
3 letter is explaining why I don't think I should be on leave.

4 Q Okay.

5 MS. DeVLEMING: Okay. Your Honor, General Counsel for the
6 Acting General Counsel moves to admit General Counsel's 150
7 into evidence.

8 MR. LOFLAND: No objection.

9 MR. JENSEN: No objection.

10 JUDGE POLLACK: General Counsel 150 is received.

11 **(General Counsel Exhibit 150 received into evidence)**

12 Q BY MS. DeVLEMING: We don't need that anymore so you can
13 flip it over. Let's move on. So I think you testified that
14 Kathy Grice did not immediately send on the protocol that you
15 requested? Did you ever follow up about receiving a written
16 copy of the protocol referred to?

17 A I don't -- I believe I called one other time.

18 Q Okay. When did you call another time?

19 A I don't know the date.

20 Q Can you approximate then around what month?

21 A January.

22 Q Okay. January of what year?

23 A It would be 2012.

24 Q Okay. And were you able to reach anyone when you called?

25 A I'm not remembering at this time.

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1 Q Did you speak with anyone at KTSS after this point about
2 your administrative leave?

3 A I had spoken to Kathy on the phone asking for the protocol
4 in writing, and I asked, "What, do you not think listening to
5 your boss is protocol," or along those lines, but I just never
6 received it in writing.

7 Q Okay. Did you ever speak with anyone else at KTSS about
8 the protocol or asking what this protocol referred to?

9 A I don't recall right now.

10 Q Okay. All right, so what was your understanding -- did
11 you later learn what this investigation that you were on leave
12 pending investigation, what that meant?

13 A I assumed that it meant -- I received a letter in the mail
14 saying that there was an open state investigation against me
15 for neglect and so I therefore assumed that the investigation
16 that was said in my leave paperwork was pending this
17 investigation.

18 Q Okay.

19 **(General Counsel Exhibit 151 marked for identification)**

20 Q BY MS. DeVLEMING: All right, so I have handed the witness
21 a copy of what's been marked for identification as GC's exhibit
22 151. Do you recognize this document?

23 A Yes.

24 Q What is it?

25 A This is the letter I got explaining that there was an open

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1 investigation from the Department of Health State of Washington
2 about the incident that occurred on December 20th.

3 MS. DeVLEMING: Okay. Your Honor, I move to admit GC-151
4 into evidence.

5 MR. JENSEN: No objection here.

6 MR. LOFLAND: I object. I don't see relevance to the
7 issues at hand.

8 MS. DeVLEMING: Your Honor, there was a pending state
9 investigation into an allegation of neglect which was part of
10 the reason for the administrative leave, so it's all relevant.

11 JUDGE POLLACK: Okay. I'll receive it.

12 **(General Counsel Exhibit 151 received into evidence)**

13 Q BY MS. DeVLEMING: Ms. Sale, did you ever meet with an
14 investigator from the Department of Health relating to this?

15 A Yes. As soon as I got this letter I called them myself
16 and talked to the investigator, and I ended up meeting him
17 early February.

18 Q Okay. Where did you meet him?

19 A At a coffee shop in Bremerton.

20 Q Do you remember the investigator's name?

21 A I believe it was Rodney Johnson.

22 Q Did you tell Mr. Johnson your story of the incident as you
23 told it today?

24 A Yes. He was there strictly to gather facts. He wasn't
25 there to take sides.

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1 Q What is your employment status with KTSS now?

2 A I'm no longer with Kitsap Tenant Support Services.

3 Q How did that come about?

4 A In early February I got a letter from Alan Frey saying
5 that I had been terminated from my job.

6 Q What year? February of when?

7 A February 2012.

8 Q And did the letter give the same reasons for your
9 termination that were provided in the administrative leave?

10 A Yes.

11 Q Did you receive that termination letter -- did you ever
12 end up hearing back from the State Department of Health about
13 the results of your investigation?

14 A I did not hear back from them until March.

15 Q Okay. So did you receive the KTSS termination letter
16 before or after the results of the investigation?

17 A Oh, I received my letter before the results of the
18 investigation.

19 Q Okay. So you said you didn't receive notice of the
20 outcome of the state's investigation until -- what did you say?

21 A I believe it was March 2012.

22 Q Okay. How did you hear about the results?

23 A Through a letter in the mail.

24 Q What did that letter say?

25 MR. LOFLAND: Objection.

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1 JUDGE POLLACK: Do you have the letter?

2 MS. DeVLEMING: Yes, sir.

3 **(General Counsel Exhibit 152 marked for identification)**

4 Q BY MS. DeVLEMING: So I've handed the witness what's been
5 marked for identification as GC's exhibit 152. Ms. Sale, do
6 you recognize this document?

7 A Yes, I do.

8 Q What is it?

9 A This is the letter I got through the mail from the
10 Department of Health, State of Washington stating that they are
11 closing the --

12 MR. LOFLAND: Objection. The letter will speak for itself
13 if it is admitted.

14 **(General Counsel Exhibit 152 is received into evidence)**

15 MS. DeVLEMING: Your Honor, I move for the admission of
16 GC-152 into evidence.

17 MR. JENSEN: No objection.

18 MR. LOFLAND: To which I object for several reasons. One,
19 this is a claim against a nursing assistant license. There's a
20 different standard. This is not a complaint through the
21 Department of Social and Health Services who investigates abuse
22 and neglect of matters in this program. It's a different
23 standard. It's no different than admitting determination of
24 the Employment Security Department.

25 JUDGE POLLACK: Overruled. I'll receive it.

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1 MS. DeVLEMING: Thank you, Your Honor.

2 Q BY MS. DeVLEMING: Ms. Sale, are you currently working?

3 A For any employer?

4 Q Uh-huh.

5 A Yes.

6 Q Where are you working?

7 A I'm currently employed through Martha and Mary.

8 Q What's Martha and Mary?

9 A Martha and Mary is a business that I'm a CNA, Certified
10 Nursing Assistant now, and I help take care of the elderly.

11 Q Okay. And do you still have your NAR license?

12 A I've now went and got further education and I'm now a
13 Certified Nursing Assistant.

14 Q Okay. Thank you very much, Ms. Sale. No further
15 questions.

16 MR. JENSEN: I have a few in follow up.

17 **DIRECT EXAMINATION**

18 Q BY MR. JENSEN: Good afternoon, Ms. Sale.

19 A Hello.

20 Q You referred to Nursing Assistant Registered, I think. Is
21 that's what's called for short NAR?

22 A Yes.

23 Q You explained in your testimony already that you weren't
24 going to take the client to the doctor for a stomachache
25 because you lacked insurance and you lacked the necessary

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1 license, correct?

2 A That is why I wouldn't have been able to.

3 Q And does KTSS know whether you have those endorsements?

4 That license and that insurance?

5 A Yes.

6 Q How do they know that?

7 A Because if you do have the license or the proper insurance

8 you would submit into the office and it would be in your file.

9 Q And you never did so, obviously? You shook your head.

10 Can you give a yes or no for the record?

11 A No.

12 Q Okay. You said you talked to Mr. Frey at the time of the

13 incident and you said that in terms of transporting this person

14 to the doctor that at that time you had some explanation along

15 the line there was no staff there to do that. Correct?

16 A Correct.

17 Q Did you tell him there weren't enough staff, is that what

18 you were saying? There weren't enough people there to do that,

19 or not the qualified people to do that?

20 A I was meaning the qualified people. There was no one in

21 that household that was qualified to take him.

22 Q You talked about being at the mandatory meeting where Mike

23 Foster and someone did some speaking against the union

24 campaign, correct?

25 A Correct.

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1 Q How many employees were there as far as you could
2 estimate?

3 A I don't recall. I do know that there was more than one
4 meeting held, and there was just -- they were in smaller groups
5 and I can't recall how many were there.

6 Q Okay. Back to the incident with the person with the
7 scratch on his -- where was the scratch and the bruise? Where
8 were they found on the body?

9 A On his leg.

10 Q On his leg? Lower leg, high leg, whereabouts? Above or
11 below the knee? Do you remember?

12 A I don't. I believe it was his lower, but I can't say.

13 Q Okay. You were a floater. Had you worked in that home --
14 what was the name of that home?

15 A The 9th Street Bremerton House.

16 Q 9th Street Bremerton Home. Had you worked there the day
17 before at that home?

18 A Yes.

19 Q Okay. Did you inspect the person the day before? Would
20 you have had occasion to go look at his torso, his body, his
21 legs?

22 A I had seen his body. I wasn't searching for any marks,
23 but I hadn't seen any.

24 Q So you think it was fresh and new that morning?

25 A Yes. Or from the previous night when I hadn't been

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1 working.

2 Q Sure. And you testified that on examination that Hannah
3 couldn't drive this person to the doctor. Why did you say
4 that?

5 A She did not have the correct car insurance for her own
6 vehicle, nor did she have the correct license to drive the
7 company van.

8 Q And how do you know that?

9 A She had told me.

10 MR. LOFLAND: Objection. Move to strike the testimony.
11 Lack of personal knowledge.

12 JUDGE POLLACK: Okay. We'll ignore it. Go ahead.

13 MR. JENSEN: I'm sorry, I didn't hear what you said, Your
14 Honor.

15 JUDGE POLLACK: I said we'll ignore it.

16 Q BY MR. JENSEN: You told us that Hannah, when you talked
17 to Hannah Gates about this clients injury on his leg that she
18 said that she had reported this to the office and called
19 Jessica, correct?

20 A She did not call the office. She called our head of
21 household, Jessica.

22 Q That's what she told you?

23 A Yes.

24 Q Now when you worked together in these homes with each
25 other, are you and the other staff in communication with each

1 other about who is doing what?

2 A Yes.

3 Q Do you have to rely on another so that you make sure
4 everything is covered and things aren't double done?

5 A Yes.

6 Q So you have to rely on what she says?

7 A Yes.

8 Q She has to rely on what you say?

9 A Yes.

10 Q In order to accomplish what you're doing safely and
11 properly, right?

12 A Correct.

13 Q You were asked about Mieke coming out to the homes where
14 you worked prior to this incident. How often would you see her
15 come out when you were an employee?

16 A I don't -- I don't know. Maybe, estimation a handful of
17 times a year.

18 Q Okay. And how about Mr. Frey, how often?

19 A Less than a handful of times a year.

20 Q Had you ever seen them come out together?

21 A Them two? No.

22 Q You talked about an incident where somebody -- I think you
23 said the same client had his -- a fracture. Was it a wrist
24 fracture or do you know?

25 A No. It was I believe an ankle.

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1 Q Do you know how that happened?

2 A I don't recall. It was not on my shift of me working.

3 Q Okay. I want to go back over kind of the timeline of that
4 morning where you discovered the injury on your client's leg
5 and then from the time that Alan Frey and Mieke showed up, Mr.
6 Frey went right in to see the client, correct?

7 A Correct.

8 Q And you stayed with him?

9 A Correct.

10 Q So all the time Mr. Frey was with his client, you were
11 with him as well?

12 A Correct.

13 Q And then Mieke went right away into another room with
14 Hannah?

15 A Correct.

16 Q Okay. And then at some point, did you and Mr. Frey leave
17 the client? Together you left and went into the kitchen and
18 talked with the other two?

19 A Correct.

20 Q Is that when the -- who announced what the plan was going
21 to be to get this fellow to the doctor?

22 A Mieke.

23 Q Mieke. And so were all four of you there at that time?

24 A Yes.

25 Q And did you all four agree to that protocol if you will,

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1 of that's how this was going to be handled?

2 A Yes.

3 Q Okay. And what time then -- about what time was that? I
4 think you said -- correct me if I'm wrong -- Mr. Frey and Mieke
5 arrived around say 10 o'clock in the morning, was it?

6 A Yes.

7 Q Okay. What time did you get to the kitchen and get
8 through the new plan that this is how we're getting the fellow
9 to the doctor?

10 A I believe they left like maybe a half hour later.

11 Q And that plan was contingent on you getting over to the
12 other house to relieve Jessica, correct?

13 A Correct.

14 Q Okay. But before you did that you had some duties you had
15 to do to take care of the patients?

16 A It was assist the other, Hannah Gates, in client care,
17 which comes first.

18 Q Sure. So as soon as that was done, you went over to the
19 other house to relieve Jessica?

20 A Correct. I was over at the other house by noon.

21 Q And then you never came back?

22 A Correct.

23 Q Did you ever receive AIDS training while employed at KTSS?

24 A Yes.

25 Q Who supplied that training?

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1 similar letter.

2 MR. JENSEN: That's where I'm going.

3 JUDGE POLLACK: Go ahead.

4 Q BY MR. JENSEN: Let's start over again. Do you know
5 whether Hannah Gates has ever received a similar letter?

6 A I've been told.

7 MR. LOFLAND: Objection.

8 Q BY MR. JENSEN: Other than what she'd told you, had she
9 ever handed it to you, or shown it to you?

10 A No.

11 MR. JENSEN: Okay. Nothing further.

12 MR. LOFLAND: Affidavit, please?

13 MS. DEVLEMING: Here's one of seven pages with one
14 attachment.

15 MR. LOFLAND: It's going to be a while in recess.

16 JUDGE POLLACK: Okay. Off the record, please.

17 (Off the record.)

18 (On the record.)

19 CROSS-EXAMINATION

20 Q BY MR. LOFLAND: Ms. Sale, the position you held, I
21 believe you described as float?

22 A Yes.

23 Q Was that the way in which the position was actually
24 titled, or was that just the way you are describing it?

25 A That's just the way. I don't know the exact title of my

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1 position.

2 Q How long did you work in that position?

3 A Since I was hired. I mostly worked within two households,
4 the all male household and the all female household, but I went
5 to different households as needed throughout my whole
6 employment.

7 Q Okay. So my question to you was how long did you work at
8 KTSS?

9 A I was hired July 2008 and I was put on administrative
10 leave December 2011.

11 Q So approximately three and a half years?

12 A Yes.

13 Q And in that three and a half years you never knew the
14 title of the position that you were working in?

15 A We always called it the float.

16 Q Okay. Did you always work under the same head of
17 household, Jessica Lanzoratta?

18 A No.

19 Q How many different head of households did you work under,
20 approximately?

21 A That would depend on which household I was working at for
22 the day.

23 Q Okay. In the three and a half years you worked at Kitsap
24 Tenant Support Services , u worked at a number of households,
25 correct?

1 Q If you were to need time off, did you go to the head of
2 household and ask for time off?

3 A We could go to the head of household or we could just call
4 the office ourselves.

5 Q All right, so either one was satisfactory?

6 A Yes.

7 Q And when you went to the head of household, and just say
8 for example you went to Jessica Lanzoratta and said, "Jessica,
9 I'm scheduled to work Tuesday but I need that day off because
10 I've got something going on," she would say, "Okay, take the
11 time off"?

12 A She would call the office and get it okayed and then help
13 fill my shift.

14 Q Did she tell you what shifts you were to work?

15 A No, that was the office.

16 Q Now the incident with the client that you talked about in
17 the men's house -- describe the client to me?

18 A This particular client is in a wheelchair. He is mentally
19 challenged, he has a disability. He talks but its splurred,
20 like some of the stuff he says you can't understand him. He
21 has a lot of saliva in his mouth so it's difficult to
22 understand sometimes. He's an older gentleman and he needed
23 assistance in every aspect of his hygiene to his being fed and
24 he was incontinent so we helped him with that.

25 Q So he needed help in just about every aspect of living?

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1 A Yes.

2 Q This particular client had asked on numerous occasions to
3 go see a doctor, hadn't he?

4 A That day or --

5 Q No, just in general.

6 A Yes.

7 Q How frequently? Once a week?

8 A Yes.

9 Q All right. And when he had asked to go to the doctors,
10 you were not able to transport, is that correct?

11 A Correct.

12 Q But if he asked, you would make arrangements for him to be
13 taken to the doctor?

14 A No, I would report it to our head of household. The head
15 of household would make arrangements.

16 Q Did you ever transport a client or clients to medical --
17 did you ever take client or clients to medical appointments?

18 A I have rode with clients on the access busses to medical
19 appointments.

20 Q And how many times have you done that?

21 A More than I remember.

22 Q Fair enough. A significant number of times?

23 A Yes.

24 Q Not just an occasional or once or twice, but quite a few
25 times?

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1 A Yes. I had gone to a medical appointment.

2 Q Now you talked about the men's house and the women's
3 house. How close together were those houses?

4 A When I was first hired, they were in the same apartment
5 complex, but then recently before I was put on leave the male's
6 household was moved across town, to the west side of Bremerton
7 and then the ladies household was still in an apartment complex
8 considered east side Bremerton.

9 Q Okay. What in your memory is an injury of unknown origin?
10 What does that mean to you?

11 A An injury of unknown origin would be there is an injury,
12 whether a mark or something like that that we don't know where
13 it came from.

14 Q All right. And when you as a direct service staff of
15 Kitsap Tenant Support Services found an injury of unknown
16 origin, what was your duty or responsibility at that point?

17 A Inspect the injury. If there was another staff available,
18 have them also inspect the injury, and then inform the head of
19 household.

20 Q Were you supposed to inform anyone else about that?

21 A No.

22 Q As I recall your testimony, you reported the injury of
23 unknown origin to your head of household, Jessica Lanzarotta?

24 A Hannah Gates made the phone call to Jessica about the
25 injury.

1 Q And then you learned as a result of that phone call, Alan
2 and Mieke were going to come to the residence, the men's house?

3 A Correct.

4 Q Is that correct?

5 A Correct.

6 Q And do you today find that there is anything unusual about
7 Alan or Alan and Mieke coming to the house when there's a
8 report of an injury of unknown origin?

9 A Yes.

10 Q Why do you find that unusual that they would come and
11 investigate an injury of unknown origin?

12 A Yes, because typically they would not come inspect for
13 themselves, especially for a bruise, because bruises were
14 common.

15 Q Where was the bruise located on this client?

16 A It was on the leg.

17 Q Do you recall having provided an affidavit to the National
18 Labor Relations Board on January 5th, 2012?

19 A Yes.

20 Q I'm not trying to trick you. Let me give it to you. I'm
21 sure you don't really remember the date, but --

22 A Right.

23 Q But trust me, I've just read it.

24 A I have one too.

25 Q Let me give you this one first, okay?

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1 Q On line 20 and 21 of page two, it says, "I noticed a
2 bruise and scratch on the client's body." Is that correct?

3 A Correct.

4 Q So when you gave the affidavit you said you saw the bruise
5 and scratch on the body, correct?

6 A Correct.

7 Q And your testimony today was that it was on -- there was a
8 bruise on the leg?

9 A That's what I said, yes.

10 Q So which was it?

11 A The leg, which is part of the body.

12 Q You didn't mean body like torso?

13 A No. I believe I said body in this.

14 Q When you first -- when you noticed it, you just noticed a
15 bruise?

16 A And a small scratch.

17 Q And a scratch? Where was it on his body, the bruise?

18 A The leg.

19 Q Where on the leg?

20 A I can't -- I don't recall.

21 Q All right. And your testimony was when Alan Frey came out
22 he sat in the wheelchair?

23 A Alan Frey did. Yes.

24 Q Yes. When Alan Frey came to the resident, he sat in the
25 client's wheelchair?

1 A Correct.

2 Q And after he sat in the client's wheelchair, he pointed to
3 you and to Hannah Gates, the areas that he felt was causing
4 difficulty to the client, didn't he?

5 A Yes.

6 Q And one of them was an area down near the footrests that
7 had sharp edges on it?

8 A He believed that it was a sharp edge.

9 Q Did you reach down and touch the sharp edge?

10 A No.

11 Q Why not?

12 A I wasn't asked to do so.

13 Q Without being asked to do so, wouldn't you be curious to
14 see if that was really what was causing the problem with the
15 client?

16 A I just listened to what Alan told me and I didn't feel --

17 Q All right, you relied on what Alan Frey did in looking at
18 the wheelchair and finding the problem, is that correct?

19 A Correct.

20 Q Do you have any reason to believe that what Alan found,
21 the sharp edge on the wheelchair was not really sharp and
22 wasn't causing the problem?

23 A I did not feel it for myself, but couldn't see where there
24 was a sharp edge.

25 Q Do you have any reason to believe that Alan was not

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1 correct in finding that there was a sharp edge?

2 A I do believe that there was no sharp edge that needed to
3 be repaired.

4 Q And how do you believe that from further evidence when
5 Tim's Home Medical Supplies --

6 MR. LOFLAND: I'm going to objection in advance because
7 that's going to require hearsay.

8 JUDGE POLLACK: But you asked the question.

9 MR. LOFLAND: I asked the question, but I withdraw the
10 question.

11 JUDGE POLLACK: Okay.

12 Q BY MR. LOFLAND: You didn't believe Alan Frey that there
13 was anything that needed to be, the sharp edge didn't need to
14 be repaired, is that correct?

15 A At the time Alan Frey was my boss and I just said okay.

16 Q Okay, but at the time you didn't believe that Alan Frey
17 was correct and that sharp edges needed to be taped and
18 protected, is that correct? You did not believe that?

19 A Correct, I guess. Correct.

20 Q You didn't believe him even though you didn't bend down
21 and touch and feel the sharp edge to see whether it was right
22 or wrong, is that correct?

23 A Correct.

24 Q And Alan Frey told you to tape the edges that he said were
25 sharp, didn't he?

1 A Correct.

2 Q And you didn't do that?

3 A No.

4 Q Let me just make sure the answer is correct. But when I
5 said you didn't do that, your answer means I didn't do that?

6 A No, I did not tape the wheelchair.

7 Q Thank you. And you didn't do that because you didn't have
8 tape?

9 A I didn't do that right at the moment because it wasn't
10 asked to do it right then for one, for two I was never given
11 any tape to tape the wheelchair, and for three, I ended up
12 leaving that household within an hour.

13 Q Did you ever put the client back in the wheelchair before
14 you left?

15 A The client did go back in the wheelchair. I don't recall
16 if it was me or Hannah Gates that put him back in the
17 wheelchair.

18 Q Okay. And at the time you put him back in the wheelchair,
19 you hadn't taped the sharp edges as Alan Frey told you.

20 MR. JENSEN: Objection. She didn't say she put him back
21 in the wheelchair. She said she didn't know if it was Hannah
22 Gates that put him in.

23 MR. JENSEN: Let me rephrase it.

24 JUDGE POLLACK: Okay.

25 Q BY MR. LOFLAND: At the time the client was placed in the

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1 wheelchair again, had you taped the sharp edges as Alan Frey
2 had instructed you?

3 A No.

4 Q At the time when he was put back in the wheelchair, did
5 you say stop, we haven't corrected the problem that Alan Frey
6 told us to correct.

7 A No.

8 Q If you didn't have tape, why didn't you pick up the phone
9 and call Alan Frey and say I don't have tape, I can't
10 accomplish this task?

11 A My main focus that day was to help assist with their needs
12 of eating and getting their medications and then me leaving so
13 that client could go to the doctors. That was my main
14 priority, I suppose, at that time.

15 Q What was the time of day that you noticed these bruises
16 and scratches?

17 A Between 8:00 and 9:00 a.m.

18 Q Thank you. And did Mr. Frey tell you to do anything else
19 to the chair to protect against the bruise that was occurring
20 somewhere on the leg?

21 A We should call Tim's Home Medical Supplies and have them
22 inspect the wheelchair.

23 Q Did he tell you or tell Hannah Gates in your presence to
24 put foam on part of the chair to pad it?

25 A No.

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1 Q No?

2 A It was not said to me to put foam.

3 Q Do you still have the exhibits in front of you that had
4 been handed to you?

5 A Yes.

6 Q Look at exhibit 150, which is the letter that you wrote
7 on, I believe it's January 8th, do you have that?

8 A Yes.

9 Q Okay. Who helped you write this letter?

10 A Myself.

11 Q Okay. Did you talk to or consult with anybody before you
12 wrote this letter?

13 A No, I wrote it in my own home.

14 Q Did you talk by telephone to anybody before you wrote the
15 letter?

16 A I spoke -- talked to my mother.

17 Q After you were placed on administrative leave and before
18 you wrote this letter, did you talk to Hannah Gates about the
19 incident that happened?

20 A Yes.

21 Q How many times?

22 A A number of times.

23 Q Give me your best memory?

24 A Maybe six.

25 Q And did you talk to Jessica Lanzoratta about the incident?

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1 A Yes.

2 Q And how many types did you talk to Jessica?

3 A Probably more than talking to Hannah.

4 Q So more than six?

5 A Yes. Trying to keep an update on the situation.

6 Q Did you talk with either Jessica Lanzoratta or Hannah

7 Gates about your response to Mr. Frey?

8 A After I had written my response.

9 Q And before it was sent?

10 A No. They got my -- they saw my letter after, a copy of
11 it.

12 MR. LOFLAND: Okay. I have no further questions.

13 MS. DEVLEMING: Can we have just a moment off the record?

14 JUDGE POLLACK: Off the record, please.

15 (Off the record.)

16 (On the record.)

17 REDIRECT EXAMINATION

18 Q BY MS. DEVLEMING: So first, earlier when you were being

19 questioned by Mr. Jensen you were asked about a handful of

20 times during which -- I'm sorry, you testified a handful of

21 times Alan had come to the home that you were working in and a

22 handful of times Mieke had also, per year, is that right?

23 A Uh-huh.

24 Q Was that through your entire tenure with the company, like

25 an average since 2008 every year they would come five times

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1 each?

2 MR. LOFLAND: Your Honor, I object on improper re-cross.
3 It's not even with the new area brought up during cross
4 examination -- excuse me -- re-direct. It's not in with the
5 new area brought up during cross, it's just reiterating what
6 had been developing during direct.

7 MS. DeVLEMING: Your Honor, if I recall there were also
8 questions on cross examination about the number of times that
9 different managers had come to check on the households.

10 JUDGE POLLACK: I don't think so.

11 MS. DeVLEMING: All right, I'll let it go.

12 Q BY MS. DeVLEMING: Moving on then, let's jump back to the
13 day that Alan Mieke came to check on the client's injury on
14 December 20th. When you and Alan were in the client's bedroom
15 and Alan examined the wheelchair, what exactly did Alan tell
16 you right then about taping up the wheelchair? How did that
17 conversation go?

18 A He said it should be taped.

19 Q Okay. Did he, you know, tell you to tape it right then?

20 A No.

21 Q Did he you know, watch you tape it up, or you know, did he
22 tape it himself right then?

23 A He did not tape it himself. He did not watch me tape it,
24 he did not ever hand me any tape.

25 Q Why was that that it didn't immediately with Alan there

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1 get taped up?

2 A I'm not sure.

3 Q Was something else on everyone's mind that day?

4 A What else was on everyone's mind was getting the client to
5 the doctor as the client had requested to Alan and Alan told us
6 to do.

7 Q Okay. So you were all, the first priority to your mind
8 was getting the client to the doctor?

9 MR. LOFLAND: Leading.

10 MS. DeVLEMING: She already testified to that effect.

11 MR. LOFLAND: Comments the evidence.

12 Q BY MS. DeVLEMING: What was the first priority in that
13 moment?

14 A Originally they came to the house for the scratch and
15 bruise, but then after the client mentioned going to the
16 doctors the main focus ended up being on getting that client to
17 the doctors over the bellyache.

18 Q Okay. Did you -- could you see a sharp edge on the
19 wheelchair where Alan -- did Alan point out an edge?

20 A He felt around and said that he felt a sharp edge?

21 Q Was it visible to your eye?

22 A No.

23 Q Earlier with Mr. Lofland, you testified about when the
24 client was later put into the wheelchair, and I think there
25 might have been a confusion there. When exactly was the client

1 put in the wheelchair?

2 A After Mieke and Alan left the household, before I left.

3 Q Okay. And who put him in the wheelchair?

4 A I don't recall if it was myself or Hannah Gates.

5 Q Okay. And why did he need to go into the wheelchair?

6 A So he could take his afternoon medication and have lunch.

7 Q Okay. And was there another way of transporting him or
8 getting him to the table?

9 A No.

10 Q Okay. What about getting him to the doctor? Was there
11 another wheelchair?

12 A No.

13 Q So you also earlier testified about the access bus and
14 that there had been times that you had ridden it throughout
15 your tenure with clients. How are trips on the access bus
16 scheduled?

17 A There's a number to call and then you tell them the time
18 that you would like to go and it has to be made 24 hours in
19 advance.

20 Q Okay. So was there ever a scenario, could it have
21 happened that if a client suddenly needed to go somewhere you
22 could have taken an access bus?

23 A No.

24 Q You also testified about the name of your position, the
25 float position. Did you ever hear another title for that

1 position?

2 A I don't recall.

3 Q Were you ever handed a document with your exact working
4 title?

5 A My exact working title was just direct support staff.

6 Q Okay. So the float position didn't -- thank you. You
7 also jumping back to the day of the incident, if I could. You
8 testified that prior to you going to the other house to relieve
9 Jessica, you assisted Hannah with client care duties. Can you
10 describe what those duties you helped her with were?

11 A There was three clients.

12 MR. LOFLAND: The same objection. This is not new
13 matters. This is simply repeating what was developed on
14 direct.

15 MS. DeVLEMING: I would maintain again that during cross
16 examination about why the witness didn't promptly leave.

17 JUDGE POLLACK: All right. Go ahead. Go ahead.

18 A BY THE WITNESS: We had to toilet, meaning putting the
19 clients on the toilet, changing their briefs if they were wet,
20 and then bringing them to the table where we could prepare
21 their medications and lunch.

22 Q BY MS. DeVLEMING: And were there other staff in the home
23 that day other than you and Hannah?

24 A No.

25 Q Okay. Would it have been -- could Hannah have done those

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1 duties herself?

2 A She could have.

3 Q Could she easily have done those duties?

4 A A lot of times there was only one person in the house, one
5 worker at a time. It made it easier to have assistance with
6 there being three clients.

7 Q Okay. Finally, You testified that you did find it unusual
8 for Alan and Mieke to come to the home that day to investigate
9 an injury of unknown origin. Had this type of thing happened
10 before? Had two high managers come to investigate a bruise and
11 scratch?

12 A No.

13 Q Had other -- I think you said that they didn't themselves
14 would come. Who else would come to check into these types of
15 injuries in the past?

16 A I can't recall the names of the other office employee.

17 Q Okay. But would it ever be more than one?

18 A Typically it would be one.

19 Q Okay. Okay, finally, last question, at the very end you
20 talked about how you discussed with Hannah about the incident
21 after you had drafted your response and sent your response.
22 Why did you speak with Hannah about the incident?

23 A We spoke about the incident just to see if any one of us
24 found out anything new. We were also friends outside of work.
25 Just to see, you know, the updates and if she had anything or

1 Q And you didn't think it was necessary, did you?

2 A It's not that I didn't believe it was necessary, I didn't
3 see a sharp edge. But I did not do it because I didn't believe
4 it was necessary.

5 Q You just didn't do it at all?

6 A It did not get done before I left that house that day.

7 Q And when you were unable to -- and how far away was Hannah
8 Gates when you were instructed to do this?

9 A She was in the household.

10 Q How far away was she?

11 MS. DeVLEMING: Objection. Calls for speculation. She
12 couldn't have known from inside the client's room where Hannah
13 was in the home?

14 JUDGE POLLACK: Assuming she was in the kitchen, how far
15 away was the kitchen?

16 A BY WITNESS: Down a short hallway and around a corner.

17 Q BY MR. LOFLAND: Okay. Could you see Hannah Gates from
18 where you were?

19 A No.

20 Q Before you left the household, did you tell Hannah Gates
21 that you were unable to tape the wheelchair?

22 A No, it wasn't talked about before I left the house again.

23 Q Did you tell your head of household that you did not tape
24 the wheelchair, although you had been instructed to do that?

25 A The head of household was aware.

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1 Poulsbo, Washington.

2

DIRECT EXAMINATION

3 Q BY MS. DeVLEMING: Good afternoon, Ms. Gates. Did there
4 come a time that you worked for the Respondent in this matter,
5 Kitsap Tenant Support Services?

6 A Yes.

7 Q When did you first go to work for KTSS?

8 A 2010.

9 Q Okay. And what was your position you were originally
10 hired into by KTSS?

11 A Caregiver.

12 Q Okay. Would you tell the court a little about your work
13 history prior to working for KTSS?

14 A I've been a caregiver since I was 17 in all different
15 facilities.

16 Q Okay, and when you say caregiver, what do you mean by
17 that?

18 A Taking care of the elderly.

19 Q Okay. What got you into that kind of work?

20 A Saw an ad in the newspaper and applied for it.

21 Q And so you said since you were 17. About how many years
22 now have you been doing that kind of work?

23 A Eight.

24 Q So let's get back to when you were first hired by KTSS.
25 What were the requirements, was there any particular training

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1 when you were first hired?

2 A No.

3 Q Did you have any training in this type of work coming into
4 your tenure with KTSS?

5 A Yes.

6 Q What kind of training did you have?

7 A CPR/First Aid, Fundamentals of Care Giving, Dementia
8 training, my NAR, Nursing Assistant Registered.

9 Q Okay. Is that a license?

10 A Yeah.

11 Q And to confirm for the record, did KTSS -- you came in
12 with all of those credentials?

13 A Yes.

14 Q What exactly is an NAR license?

15 A It's like a CNA, just says that you can work with the
16 elderly.

17 Q And what does CNA refers to?

18 A Certified Nursing Assistant.

19 Q Please. And what does it require to get a NAR license?

20 A Classes.

21 Q Okay. Classes on what?

22 A What to do with the elderly kind of, just everything you
23 need to know.

24 Q Okay. So you said you were originally hired as a
25 caregiver. Did you work in a particular program originally at

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1 KTSS?

2 A ITS.

3 Q What does ITS stand for?

4 A I don't remember.

5 Q Were there more than one program throughout KTSS?

6 A Yes.

7 Q So what was different about ITS from the other or others?

8 A We did everything for our clients.

9 Q When you say everything, what kind of care did you
10 provide?

11 A Feeding, laundry, cleaning up, changing, showering.

12 Q Okay. Where did these clients live?

13 A In Bremerton.

14 Q Okay. Did they live in a particular -- you know, all
15 together, or?

16 A Yeah. I had three clients.

17 Q Okay, and they all lived together in one home?

18 A Uh-huh.

19 Q Was this a KTSS facility or was it the client's home?

20 A It was the client's home.

21 Q Who was your immediate supervisor or who did you report to
22 day to day?

23 A Jessica Lanzaotta.

24 Q Okay, and what was Jessica's title?

25 A Head of household.

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1 Q What does a head of household do?

2 A They do all the shopping, they are the ones we go to if we
3 have problems or concerns, doctors appointments.

4 MR. LOFLAND: Your Honor, I have the same problem I've had
5 with other witnesses. Could you please ask the witness to
6 speak up.

7 JUDGE POLLACK: Okay. You have to speak loud enough so
8 that they can hear you on that side of the room as well.

9 MR. LOFLAND: Thank you.

10 JUDGE POLLACK: Go ahead.

11 Q BY MS. DeVLEMING: So I think you were describing the
12 duties of an HOH.

13 A They do doctor's appointments, we go to them if we have
14 any concerns with the residents, they do shopping.

15 Q They do doctor's appointments, what do you mean by that?

16 A They take them to their appointments.

17 Q Do they schedule doctor's appointments or do caregivers?

18 A They schedule.

19 Q Okay. Do HOHs have any other duties?

20 A Not really, no.

21 Q Okay. So how -- so for these doctors appointments for
22 example, how do clients generally get to doctors appointments?

23 A The head of household will drive them or if they can't do
24 it, we go on an access bus with them.

25 Q Okay. So let's start with the first part there. If the

1 head of household drives them, do they just take them in their
2 personal car, vehicle?

3 A No. A KTSS van.

4 Q Okay. And can any employee drive the KTSS van?

5 A No.

6 Q What are the requirements to drive the KTSS van?

7 A You have to have the specific insurance, I believe.

8 Q Okay. Do you have that insurance?

9 A No.

10 Q Are you required -- were you required as a caregiver to
11 have that insurance?

12 A No.

13 Q Did KTSS know that you didn't have the insurance?

14 A Yes.

15 Q How did they know that?

16 A Because I wasn't a head of household.

17 Q Okay. So generally was it only heads of household that
18 have the van insurance?

19 A I believe so, yes.

20 Q Okay. Was there any other way that employees could take
21 clients to a doctor's appointment, for example, other than the
22 van?

23 A Access.

24 Q Okay. So I think you said that, access bus?

25 A Uh-huh.

1 Q So how does that work?

2 A You would call and make an appointment and they would come
3 and pick you up.

4 Q Okay. Can any employee take the access bus?

5 A Yes.

6 Q How do you call for the access bus to come? Can you just
7 call it and it will be there in a few minutes?

8 A You would call and make an appointment with them, and a
9 time.

10 Q Okay. Could a caregiver make an appointment for, you
11 know, 10 minutes from now?

12 A No.

13 Q So how much notice did you need?

14 A A day.

15 Q Was there any -- was there a third way of getting clients
16 where they needed to be, whether to a doctor's appointment or
17 other?

18 A No.

19 Q Okay. Now I want to transition a little bit here. Did
20 there come a time in around in 2011 when you heard of a union
21 organizing campaign?

22 A Yes.

23 Q And what was your first contact with the union directly?

24 A In August, I believe.

25 Q And what happened?

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- 1 A I met the union rep outside in her car.
- 2 Q And this was August of the same year, of 2011?
- 3 A Yes.
- 4 Q And when you say outside in her car, outside where?
- 5 A Outside the house that I was at.
- 6 Q Okay. And what happened with the union rep?
- 7 A She explained to me what I was signing and why I was
- 8 signing it.
- 9 Q You signed something?
- 10 A Uh-huh.
- 11 Q Did you know what that thing that you were signing was?
- 12 A Yes.
- 13 Q What was it?
- 14 A It was a ballot saying that I was for the union.
- 15 Q Okay. What was your understanding of what that ballot or
- 16 piece of paper was to be used for if anything?
- 17 A To try and get better working conditions for us.
- 18 Q Okay. Was the union rep going to use that piece of paper
- 19 for any particular reason?
- 20 A Yes.
- 21 Q For what reason?
- 22 A My vote.
- 23 Q All right. And prior to December of 2011, had you ever
- 24 been disciplined by KTSS for any reason?
- 25 A No.

1 Q Had you ever been put on administrative leave during your
2 tenure with KTSS?

3 A No.

4 Q When was the first time you were disciplined?

5 A I got a medication error.

6 Q And when was that?

7 A That was a couple months before August, so June.

8 Q Of 2011.

9 A I believe, yeah.

10 Q Was that -- did you receive a written warning or a
11 disciplinary notice?

12 A My head of house brought me a piece of paper to sign.

13 Q Okay. Was it something that went into your record, do you
14 know?

15 A I'm not sure.

16 Q Okay. When was the first time you actually received --
17 did you ever receive something entitled Written Warning, or
18 another document for an incident in or around December 2011?

19 A Yes.

20 Q And what happened?

21 A It was after my administrative leave, explaining why I was
22 on it.

23 Q Okay. So let's jump back a minute. Why did you get put
24 on administrative leave?

25 A From my understanding because I refused to take a client

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1 to the doctor and I didn't fix a wheelchair.

2 Q Okay. When did this purported incident happen?

3 A This happened in December.

4 Q Of 2011?

5 A Yes.

6 Q Do you know an approximate date in December?

7 A The 23rd.

8 Q It happened on the 23rd?

9 A That week.

10 Q Okay. So did the incident occur on the 23rd, or did you
11 receive the -- get put on administrative leave on the 23rd?

12 A I was put on leave on the 23rd.

13 Q Okay. So when did the incident occur?

14 A The 20th.

15 Q So earlier in that week?

16 A Yeah.

17 Q So what happened that day that the incident occurred on
18 the 20th?

19 A I was at work and I was working with another employee.

20 She called me back into the shower room to take a look at the
21 client to look at a scrape on his leg.

22 Q Who was this other employee?

23 A Alicia Sale.

24 Q Okay. And what was her title?

25 A Caregiver.

1 Q Okay. Was anyone else working at the house at the time?

2 A No.

3 Q So when you went to the shower to check on the client,
4 what did you see?

5 A I saw the scrape she was talking about.

6 Q Okay. Can you describe the scrape, the size, where it --
7 well, how big was the scrape?

8 A It was an inch.

9 Q Okay. And on what part of the body was it located?

10 A His left leg.

11 Q Okay. Did the client say anything to you at that point as
12 you looked at the scrape and bruise, or scrape?

13 A No.

14 Q What happened next?

15 A I left the shower and went to call my head of house.

16 Q Okay. And who was your head of house?

17 A Jessica.

18 Q Her full name?

19 A Lanzarotta.

20 Q Okay. And what did you say to Jessica?

21 A I informed her of the scratch on his leg.

22 Q Okay. Did Jessica respond?

23 A Yeah, she said she would call the office.

24 Q Whose role was it generally to call the office in these
25 types of circumstances?

1 A Jessica Lanza'otta's.

2 Q At that point did Jessica give you any instructions on
3 what to do next?

4 A No. I documented on it.

5 Q So where did you document it?

6 A In the resident's folder.

7 Q Okay. So what exactly did you document?

8 A That he had a scratch on his leg and that I notified
9 Jessica.

10 Q Is that what you generally would do in this type of
11 situation?

12 A Yes.

13 Q What happened next?

14 A After that, Jessica called me back and said that --

15 MR. LOFLAND: Objection.

16 JUDGE POLLACK: What's the objection?

17 MR. LOFLAND: Hearsay. What Jessica said.

18 MS. DEVLEMING: What Jessica said is what the listener
19 relied on so this is going to her state of mind in relying on
20 the statement, not necessarily the truth of the matter.

21 MR. LOFLAND: It's an issue of state of mind.

22 JUDGE POLLACK: Okay. Go ahead.

23 Q BY MS. DEVLEMING: What did Jessica say?

24 A That she informed the office.

25 Q Okay. Did she say anything else during that phone call?

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1 A That they were going to come out and visit the resident.

2 Q Okay. At that point, did Allie tell you that the client
3 had said anything else?

4 A He had complained of a stomachache afterwards.

5 Q Okay. Did the client at that point ask you to take him to
6 the doctor?

7 A No.

8 Q Were you personally having any contact with the client at
9 that point?

10 A No.

11 Q Who was mainly speaking with the client?

12 A Allie.

13 Q Did Allie tell you that the client had asked to be taken
14 to the doctor?

15 A No.

16 Q To your eye at this point -- so the client complained of a
17 stomachache. To your eye and in your experience as a
18 caregiver, were there signs that the client was seriously ill?

19 A No.

20 Q Did you check for any signs that he was ill?

21 A Yes.

22 Q What did you do?

23 A I asked him how he was feeling and checked him out.

24 Q Okay. So what would you normally do in the past in this
25 type of situation when a client was sick?

- 1 A Inform the head of household.
- 2 Q Okay. Anything else?
- 3 A Take their temperature.
- 4 Q Okay. Did you ever personally call in the past to
- 5 schedule a doctor's appointment for a client?
- 6 A No.
- 7 Q Okay. Had clients been sick in the past?
- 8 A Yes.
- 9 Q Okay. And had you ever been warned, disciplined or spoken
- 10 to in any way about not calling to schedule a doctor's
- 11 appointment for a client in the past?
- 12 A No.
- 13 Q Could you have driven the client that day to the doctor
- 14 yourself?
- 15 A No.
- 16 Q And why is that?
- 17 A I didn't have -- I wasn't able to drive the bus.
- 18 Q Drive the KTSS bus?
- 19 A Yeah.
- 20 Q Or the van? Okay. Could Allie have driven him?
- 21 A No.
- 22 Q The not being able to drive the KTSS van, was that a KTSS
- 23 policy or state regulation or neither or both to your
- 24 knowledge?
- 25 A To my knowledge, I don't know. Company, yes; state, I

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1 don't know.

2 Q Okay. So it was a company policy, had you gotten in the
3 van with the client, would you have gotten in trouble?

4 A To drive, yes.

5 Q Did you have any further communication with Jessica?

6 A Later on, yes.

7 Q What happened?

8 A It was after Alan had showed up to the house.

9 Q Okay. So on the phone call she had said Mieke and Alan
10 would come to the house. Did that end up happening?

11 A Yes.

12 Q Was it common for Mieke and Alan to come to a household
13 you were working in to check on a client's injury?

14 A No.

15 Q Had it ever happened before?

16 A No.

17 Q Had either one of them ever come to check on a client's
18 injury before?

19 A No.

20 Q Neither Mieke nor Alan?

21 A No.

22 Q Okay. What did you do next after getting off the phone
23 with Jessica?

24 A I went about my working day.

25 Q Okay. And did you have any interactions with the client

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1 before Alan and Mieke arrived?

2 A Yeah.

3 Q What happened?

4 A Just talking with him.

5 Q Did he have any further complaints about his illness or
6 injury?

7 A Not to me.

8 Q At any point prior to Mieke and Alan arriving, did he make
9 the comment about needing to go to the doctor or wanting to go
10 to the doctor?

11 A No.

12 Q Did Allie tell you that during this time period he had
13 asked her to take him to the doctor?

14 A No.

15 Q So you said Alan and Mieke did end up coming. Around what
16 time did they arrive that day?

17 A 10:00.

18 Q Is that A.M. or P.M.?

19 A A.M.

20 Q Okay. So about how much time had passed between when you
21 first noticed the injury and called Jessica and when Alan and
22 Mieke arrived to the house?

23 A An hour.

24 Q What were you doing at the time when Alan and Mieke
25 arrived?

- 1 A Vacuuming.
- 2 Q Okay. So what happened when they arrived?
- 3 A They came in and Alan went back to talk to the resident.
- 4 Q And where did they talk?
- 5 A In his room.
- 6 Q And where was Allie at the time?
- 7 A With them.
- 8 Q Okay. What about you? What did you do?
- 9 A I was in the kitchen with Mieke.
- 10 Q Okay. What were you doing in the kitchen with Mieke.
- 11 A We were talking and she was going through his folder.
- 12 Q His folder? Was that where you notated the injury
- 13 earlier?
- 14 A Yes.
- 15 Q Did she comment on your entries in the folder?
- 16 A No.
- 17 Q Okay. What happened after that?
- 18 A I got a call from Jessica while they were there.
- 19 Q Okay. What did Jessica say?
- 20 A She was calling to have me write down doctor's
- 21 appointments.
- 22 Q Okay. And what happened next?
- 23 A I went to write them down. And where did you go to write
- 24 down the appointments?
- 25 Q Down the hall by the client's room.

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1 A Okay. And did you overhear a conversation between Alan
2 and Alicia in the other room, in the client's room?

3 Q What did you hear?

4 A They were talking about taking him to the doctor.

5 Q Okay. Did you hear any specific quotes?

6 A Alan said that he had enough employees to get him to the
7 doctor if he needed to go.

8 Q Okay. Did you hear anything else?

9 A No.

10 Q All right. What happened after you wrote down the
11 appointments?

12 A I went back to the kitchen and Mieke went on the phone
13 with Jessica.

14 Q Okay. What did -- did you hear Mieke on her end?

15 A No.

16 Q You couldn't hear what they were talking about?

17 A No.

18 Q Okay. What happened when Mieke got off the phone?

19 A She asked us if there was a way that we could get him to
20 the doctor. I said we could figure out a way.

21 Q Okay. Did you come up with a plan?

22 A Jessica did, yes.

23 Q Okay. So was that while Mieke and Jessica were on the
24 phone or did Jessica call back again?

25 A I believe it was while they were on the phone.

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1 Q Okay. Did Jessica tell you what the planned course of
2 action was or did Mieke?

3 A Jessica did.

4 Q Okay. And what did Jessica say?

5 A Jessica said that she was going to come to the house and
6 Allie was going to go to her other house.

7 Q What happened next after Mieke and Jessica got off the
8 phone?

9 A Alan and Mieke left.

10 Q Was Alicia ever alerted to the plan?

11 A After they left, yes.

12 Q Okay. So what did you tell Alicia about the plan?

13 A That Jessica was going to come and take the client to the
14 doctor and she would go to the other house.

15 Q Okay. Before they left, did either Alan or Mieke tell you
16 there was a problem with the client's wheelchair?

17 A No.

18 Q Okay. Did Allie tell you that there had been a problem
19 with the client's wheelchair?

20 A No.

21 Q Did either Alan Mieke say anything to you about why you
22 hadn't already taken the client to the doctor?

23 A No.

24 Q What was the tenor of the -- you know, the final
25 conversation before Alan and Mieke left? Were they upset with

1 you?

2 A They didn't seem to be.

3 Q Okay. What happened next?

4 A Jessica came, Allie left and Jessica took the client to
5 the doctor.

6 Q Okay. Around when did Jessica come -- excuse me. Strike
7 that. Around what time did Allie leave for Jessica's?

8 A 11:30 or 12:00.

9 Q Okay. So about how much time had passed between when Alan
10 and Mieke left and when Allie left?

11 A An hour.

12 Q And why was that? What were you doing in that time
13 period?

14 A We were waiting for Jessica to get there so she could --
15 or waiting for Allie to go to the other house so Jessica could
16 come take the resident.

17 Q So what were you and Allie doing at this first household
18 during that hour period?

19 A Lunch.

20 Q Lunch? Okay. And so what did lunch require?

21 A Fixing it and feeding the clients.

22 Q Okay. Okay. So Allie eventually did leave. Around how
23 much later did Jessica arrive at the home?

24 A An hour.

25 Q Another hour? Okay. So about how much time had passed now

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1 between when Alan and Mieke left with this plan and when the
2 client actually got taken to the doctor?

3 A An hour and a half to two hours.

4 Q Did Jessica come back to the house with the client that
5 day while you were still working?

6 A Yes.

7 Q Did say anything about how the doctor's appointment went?

8 A Just that they had prescribed antacid for him.

9 Q Okay. Did you work in that same house the next day? That
10 would be December 21st?

11 A Yes.

12 Q Did Alicia work in the same house, the male house, that
13 next day, December 21st?

14 A No.

15 Q Where was she?

16 A At the ladies house.

17 Q Okay. Was there any follow up at any point from the
18 previous day's doctor's appointment from that client?

19 A Yes.

20 Q What was that?

21 A A doctor's appointment.

22 Q On what day?

23 A The 21st.

24 Q Okay. Who took him to the doctor that day?

25 A Jessica.

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1 Q On this day in particular, did anything happen with the
2 wheelchair?

3 A No.

4 Q Okay. At any point did a worker from the wheelchair come?

5 A Yes.

6 Q When was that?

7 A Like what time or what day?

8 Q What day was that?

9 A The 21st.

10 Q Okay. So that day? Okay. My question was unclear, I
11 apologize. Around what time did that worker show up?

12 A 11:00.

13 Q And what was the name of this company, do you recall?

14 A Tim's Home Medical.

15 Q Okay. And so what did the worker do?

16 A She took a look at the wheelchair.

17 Q And did she tell you what she had found, if anything?

18 MR. LOFLAND: Objection. Hearsay.

19 MS. DEVLEMING: Your Honor, the worker's assurance as to
20 the state of the wheelchair is relevant to how Ms. Gates went
21 about her business that point forward, relying on their
22 assurance.

23 MR. LOFLAND: I'm sorry, but it is --

24 JUDGE POLLACK: First, ask what, if anything the worker
25 did.

1 Q BY MS. DeVLEMING: What did the worker do?

2 A She took a look at the wheelchair and said that she did
3 not see anything --

4 MR. LOFLAND: Objection.

5 JUDGE POLLACK: Overruled. Go ahead.

6 A BY THE WITNESS: -- and said that she did not see any way
7 that that could have hurt the resident.

8 MS. DeVLEMING: Okay.

9 MR. LOFLAND: Judge. I have to renew the objection for
10 the record. It's entirely proper hearsay. It's offered for
11 the truth of the matter asserted.

12 JUDGE POLLACK: No. It's not being received as the truth
13 of the matter, sir. It's just being received as to what
14 information she obtained from the worker.

15 MS. DeVLEMING: Thank you, Your Honor.

16 Q BY MS. DeVLEMING: Did she say anything else?

17 A She said that we could pad it up if we saw fit.

18 Q Did it get padded up?

19 A It did.

20 Q When?

21 A The 22nd.

22 Q Why didn't it get padded up that day?

23 A Jessica Lanzarotta said that she would get stuff to pad it
24 up.

25 Q Okay. All right. Did you work the next day, the 22nd?

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- 1 A I did.
- 2 Q In the same house?
- 3 A Yes.
- 4 Q Where was Allie working that day?
- 5 A The women's house.
- 6 Q Did anything -- what happened that morning, if anything,
- 7 while you worked?
- 8 A Alan came to the house again.
- 9 Q Okay. Just Alan?
- 10 A And Mieke.
- 11 Q Okay. And how did you respond when they arrived?
- 12 A I was giving a client a shower, so I ran to the door to
- 13 answer it, saw it was them, let them in and then ran back to my
- 14 shower.
- 15 Q Okay. Do you have personal knowledge of what they were
- 16 doing there that day? Did you see what they were doing?
- 17 A I didn't.
- 18 Q Okay. Did you overhear any conversation?
- 19 A I did.
- 20 Q What did you overhear?
- 21 A I heard Alan talking to the client.
- 22 Q Okay. So you could hear but not see. Why is that?
- 23 A I was giving a shower.
- 24 Q Okay. So you're in the bathroom?
- 25 A Yes.

- 1 Q Where were Alan and the client?
- 2 A In the client's room.
- 3 Q Is that next to -- how close is that?
- 4 A They're very close together.
- 5 Q Okay. What did you hear them discussing?
- 6 A He was just asking how the client was doing.
- 7 Q Alan was?
- 8 A Yes.
- 9 Q Okay. Did you respond?
- 10 A I didn't respond at that point, no.
- 11 Q Okay. At any point?
- 12 A Okay. At any point?
- 13 Q I did poke my head out and let him know that Tim's Home
- 14 Medical came to take a look at the chair and that Jessica was
- 15 planning on padding it.
- 16 A He said that he was going to tape up one small area that
- 17 he was concerned about.
- 18 Q Was Alan, did he indicate that he was upset that it had
- 19 not already been repaired?
- 20 A No.
- 21 Q Did he object to the plan that Jessica would get supplies
- 22 and repair it?
- 23 A No.
- 24 Q Did he then pad it himself?
- 25 A He did.

1 Q On that day during that visit?

2 A Yes.

3 Q Okay. So what happened next?

4 A I finished up my shower, and while I was doing that, they
5 left.

6 Q Okay. Did you have any further communication with Alan
7 during that visit?

8 A He said keep up the good work while leaving.

9 Q Okay. Did you work the next day, Friday, December the
10 23rd?

11 A I did.

12 Q Okay. I presume in the male house?

13 A Yes.

14 Q And Allie, where was Allie working?

15 A Female house.

16 Q So you testified Alan had already padded up the wheelchair
17 a bit by this point. Did it get further padded up?

18 A It did.

19 Q By whom?

20 A Jessica.

21 Q Okay. Did anything happen during the work day on the 23rd?

22 A No.

23 Q Okay. Anything later that day?

24 A I got a call telling me I was going to be put on admin
25 leave.

- 1 Q From whom?
- 2 A From Kathy.
- 3 Q Who is Kathy?
- 4 A She worked in the office.
- 5 Q Do you know her last name?
- 6 A Grice.
- 7 Q Around what time did you get that phone call?
- 8 A That was around 3:30.
- 9 Q Okay. How do you know that that was the time?
- 10 A Because I was staying late to show a new employee how to
- 11 give a client a shower.
- 12 Q And what time were you usually off work?
- 13 A 3:00.
- 14 Q Okay. So what did Kathy say on the phone?
- 15 A That I was put on admin leave due to further investigation
- 16 by the state and by the company.
- 17 Q Okay. Did she give you a reason for why you were on
- 18 leave?
- 19 A Not really.
- 20 Q Did you respond to her?
- 21 A I did. I asked why and she gave me all the information
- 22 she could.
- 23 Q Like what? What did she say?
- 24 A Just that it was because I didn't take a client to the
- 25 doctor and get a chair padded in time.

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1 Q Okay. Did you respond to that?

2 A I did.

3 Q What did you say?

4 A I was rude. I don't know exactly what I said, but I was
5 rude, and then apologized.

6 Q Okay. Did you respond substantively to either of the
7 issues, either about the wheelchair or the doctors visit?

8 A I replied that I didn't know anything about the
9 wheelchair, but --

10 Q Okay. All right. Did you respond substantively to her
11 comment about the doctor visit?

12 A That I'm not the one to do that.

13 Q Okay. Did you ever speak with anyone else -- sorry. Was
14 anything else said during that conversation that you recall?

15 A No.

16 Q About how long did that conversation with Kathy Grice
17 last?

18 A 10 minutes.

19 Q Did you ever follow up or speak with anyone else at KTSS
20 about your administration leave?

21 A A week later.

22 Q And who did you speak with?

23 A I called to speak with Alan.

24 Q Okay. Did you get a hold of him?

25 A I did.

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1 Q And what did you ask him? What did you say?

2 A Why I was -- I asked him why I was on leave, and he
3 explained to me that it was because I didn't take the resident
4 -- or I refused to take the resident to the doctor and that I
5 didn't get the wheelchair padded.

6 Q And were you rude on the phone this time? How did you
7 respond?

8 A I don't believe I was rude, no.

9 Q Okay. How did you respond, if at all?

10 A The same way that I did with Kathy, is that I didn't
11 believe that was right, and I wasn't told anything about the
12 wheelchair and I wasn't in charge of taking the resident to the
13 doctor.

14 Q Prior to this conversation with Alan, had he ever told you
15 that there was an issue that you personally hadn't taken the
16 client to the doctor?

17 A No.

18 Q What about the wheelchair? Had you had any communication
19 with Alan that you were in trouble for not fixing the
20 wheelchair?

21 A No.

22 Q Did you ever receive written notice of the reasons for
23 your administration leave?

24 A I did.

25 Q When did you get that?

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1 A January.

2 Q What did the written notice say, if you remember?

3 A Just informing me of why I was on administration leave,
4 again because of the wheelchair and the doctor.

5 **(General Counsel Exhibit 153 marked for identification)**

6 MS. DeVLEMING: Do you need a moment to glance at it,
7 Counsel? Do you need a moment?

8 All right, so I've placed in front of the witness a
9 document that's been marked for identification as GC exhibit
10 153.

11 Q BY MS. DeVLEMING: Ms. Gates, do you recognize that
12 document?

13 A Yes.

14 Q What is it?

15 A The letter I received.

16 Q Okay.

17 MS. DeVLEMING: Your Honor, I move to enter GC-153 into
18 evidence.

19 MR. JENSEN: No objection here.

20 MR. LOFLAND: No objection.

21 JUDGE POLLACK: GC-153 is received.

22 **(General Counsel Exhibit 153 received into evidence)**

23 MS. DeVLEMING: Thank you.

24 Q BY MS. DeVLEMING: So if you look at that first paragraph
25 in the letter, it says, "The client has requested several times

1 to be taken to the doctor." Is that an accurate statement?

2 A No.

3 Q So what's inaccurate about it?

4 A The client did not request to go to the doctor several
5 times.

6 Q Okay. And then later, I think on the second page, it asks
7 for your response by January 13th, is that on the second page?

8 A Uh-huh.

9 Q Did you respond?

10 A I did.

11 **(General Counsel Exhibit 155 marked for identification)**

12 MS. DeVLEMING: I'll give Counsel a moment to look through
13 the letter.

14 [Pause]

15 MS. DeVLEMING: Are we ready?

16 JUDGE POLLACK: Go ahead.

17 MS. DeVLEMING: All right, so I've placed in front of the
18 witness a document that's been marked for identification as
19 General Counsel's exhibit 155. I apologize, it's slightly out
20 of order.

21 Q BY MS. DeVLEMING: Ms. Gates, do you recognize this
22 document?

23 A Yes.

24 Q What is it?

25 A The letter I wrote to Alan.

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1 Q In response to?

2 A The letter he wrote me.

3 Q Okay. And what is -- thank you. Ms. Gates, were you ever
4 contacted by a Washington State Department of Health
5 investigator?

6 A I was.

7 Q When were you first contacted by the State Department of
8 Health?

9 A January.

10 Q Okay. And how were you contacted?

11 A Phone.

12 Q By phone? Who called?

13 A Rodney Johnson.

14 Q Okay. Had you -- at any point did you receive written
15 correspondence regarding it at the beginning of the
16 investigation?

17 A I don't remember.

18 **(General Counsel Exhibit 154 marked for identification)**

19 MS. DeVLEMING: So I've placed in front of the witness a
20 document marked for identification as GC-154.

21 Q BY MS. DeVLEMING: Ms. Gates, have you taken a moment to
22 look at that document?

23 A Yes.

24 MR. LOFLAND: Can we take a moment, I'm confused.

25 MS. DeVLEMING: Of course.

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1 MR. LOFLAND: I have the previous document marked as 155.

2 MS. DeVLEMING: Right, I apologize, I got them -- just
3 those two. The rest will be in order.

4 MR. LOFLAND: Okay. So this one is 155 and the other one
5 is --

6 MS. DeVLEMING: This one is 154. I believe that's what it
7 says on it, right?

8 MR. LOFLAND: Thank you.

9 MS. DeVLEMING: Sorry, the other was 155.

10 JUDGE POLLACK: All right, go ahead.

11 Q BY MS. DeVLEMING: All right. Do you recognize the
12 document?

13 A Yes.

14 Q What is it?

15 A The letter that I received informing me of the
16 investigation.

17 Q Okay. So you did receive this letter?

18 A Yes.

19 Q Did you ever end up meeting with -- what was the
20 Department of Health investigator's name?

21 A Rodney Johnson.

22 Q Did you ever meet with him in person?

23 A I did.

24 Q About when did you meet with him?

25 A End of January?

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1 Q Where did you meet with him?

2 A Starbucks.

3 Q When you met with Mr. Johnson, did you tell him your story
4 as you've told it today about December 20th?

5 A I did.

6 Q What is your employment status with KTSS today?

7 A I don't work for them.

8 Q And how did that come about? Why don't you work there?

9 A I was terminated.

10 Q Around when did you find out you had been terminated by
11 KTSS?

12 A I received a letter I believe it was February.

13 Q Okay. What did the letter say?

14 A Informing me of my termination.

15 Q Who was it from?

16 A Alan.

17 **(General Counsel Exhibit 156 marked for identification)**

18 MS. DeVLEMING: Just take a moment to review it.

19 [Pause]

20 MS. DeVLEMING: Are we ready? So I've put in front of the
21 witness a document marked for identification as GC exhibit 156.

22 MR. JENSEN: No objection.

23 Q BY MS. DeVLEMING: Ms. Gates, do you recognize the
24 document?

25 A Yes.

1 Q What is it?

2 A The letter informing me that I was terminated.

3 MS. DEVLEMING: All right. I move to admit the document
4 into evidence.

5 MR. JENSEN: No objection.

6 MR. LOFLAND: No objection.

7 JUDGE POLLACK: GC-156 is received.

8 **(General Counsel Exhibit 156 received into evidence)**

9 MS. DEVLEMING: And I am now thinking I may not have moved
10 for 154 or 155.

11 JUDGE POLLACK: That's correct.

12 MS. DEVLEMING: I apologize. May I move for the admission
13 of both GC-155 and 154, which came in in that order.

14 MR. JENSEN: Are you confident that 153 has been received?

15 JUDGE POLLACK: 153 was received.

16 MR. LOFLAND: I didn't hear what Mr. Jensen said.

17 MS. DEVLEMING: He asked if I was confident that 153 had
18 been offered and received.

19 MR. LOFLAND: Okay.

20 MS. DEVLEMING: Yes.

21 MR. LOFLAND: I have no objection to 155. I do objection
22 to 154 for the reasons stated about Ms. Sale, that this is a
23 different proceeding.

24 JUDGE POLLACK: Okay. 155 and 154 are received.

25 **(General Counsel Exhibit 155 and General Counsel Exhibit 154**

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1 are received into evidence)

2 MS. DeVLEMING: Thank you, Your Honor, and I now offer 156
3 as well.

4 JUDGE POLLACK: 156 is received.

5 Q BY MS. DeVLEMING: Ms. Gates, that letter in front of you,
6 strike that. Excuse me. Did you ever receive notice of a
7 decision made in the state investigation for which you met with
8 Mr. Johnson?

9 A Yes.

10 Q The letter in front of you, did you receive this letter
11 before or after you heard about the outcome of the state
12 investigation?

13 A Before.

14 Q Okay. Around when did you receive notice of the outcome
15 of the state's investigation in your case?

16 A The end of February or beginning of March.

17 Q Okay. And how did you receive notice of that decision?

18 A A letter.

19 Q What did the letter say?

20 MR. LOFLAND: Objection.

21 **(General Counsel Exhibit 157 marked for identification)**

22 MS. DeVLEMING: I have handed the witness what's been
23 marked for identification as GC's 157.

24 Q BY MS. DeVLEMING: Ms. Gates, do you recognize the
25 document?

1 DIRECT EXAMINATION

2 Q BY MR. JENSEN: When you went to work, did you have HIV
3 and AIDS training at KTSS?

4 A I had it before.

5 Q Okay. So they wanted to make sure you had it either
6 before or with them, is that correct?

7 A Yes.

8 Q One of your documents here refers to your --

9 JUDGE POLLACK: Are you getting his voice?

10 MS. DEVLEMING: Can't hear you.

11 Q BY MR. JENSEN: -- General Counsel 155, if you'd pick it
12 up in front of you there. Do you have that, Ms. Gates?

13 A Uh-huh.

14 Q At the bottom of page one, the last sentence, refers to
15 having your picture in the union flier. Could you explain to
16 the judge what you were talking about there?

17 A My head of house, Jessica Lanzarotta, asked me if I would
18 be willing to have my picture taken to put on the union flier
19 that would go out to all the union supporters. I responded
20 yes.

21 Q So were you on such a flier?

22 A I was.

23 Q Okay. And do you know whether Alan Frey ever received a
24 copy of that?

25 A A hundred percent, no. I just had heard hearsay.

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1 Q Going back to the incident with the client on December 20
2 with the scratch. Did you ever hear him ask to go to the
3 doctor?

4 A That day? No.

5 Q Okay. Did you hear Mr. Frey ask the client if he wanted
6 to go to the doctor?

7 A I myself did not hear it.

8 Q There was a conversation back and forth between you and
9 Ms. DeVleming about -- using the term Allie, and I presume
10 that's short for Alicia Sale?

11 A Yes.

12 Q Okay. You said Allie couldn't drive the client to the
13 doctor. Why do you say that?

14 A Because like me she did not have the proper requirements
15 to drive the van.

16 Q After you were terminated -- General Counsel's 156,
17 February 1, 2012, per that letter you were terminated. Did you
18 ever discuss thereafter your termination and a possible
19 recommendation with Kathy Grice?

20 A Kathy told me while I was being told that I was on admin
21 leave that she would give me a recommendation if I needed it.

22 Q Did you ask her for that or did she offer that on her own?

23 A She offered on her own.

24 Q Did you attend an NLRB hearing here as a union supporter?

25 A I did.

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- 1 Q And was Mike Closser there?
- 2 A Yes.
- 3 Q Did he see you there?
- 4 A I don't know.
- 5 Q How many employees were here at the NLRB that day, in the
- 6 room?
- 7 A Eight to ten.
- 8 Q And were you here all day?
- 9 A I was here half the day.
- 10 Q Okay. Was he here all the time that you were here?
- 11 A Yes.
- 12 Q In the same room?
- 13 A Yes.
- 14 Q Did you ever receive an annual evaluation at KTSS?
- 15 A I did.
- 16 Q One or more than one?
- 17 A One.
- 18 Q What was the tenor of that? Was it a favorable evaluation
- 19 or not?
- 20 A Favorable.
- 21 Q Okay. When the client was taken to the doctor on December
- 22 20th, after Jessica got to the home, how soon after Jessica got
- 23 to the male home to take the client to the doctor, how soon
- 24 after she got there did she leave with him?
- 25 A Right away.

1 Q Was Jessica in on the idea that or was she not in on the
2 idea that before Alicia Sale would leave the male home, that
3 she would assist you with the meds and the feed and care for
4 the clients there?

5 A Yes.

6 Q Yes, she was aware of that?

7 A She was aware.

8 Q Okay. And that had her approval and her endorsement?

9 A Yes.

10 Q Do I recall your testimony correctly that Alan and Mieke
11 came out to the home again on December 21?

12 A Yes.

13 Q That's when you were showering someone when they knocked
14 on the door?

15 A Yes.

16 Q Did anybody ask at that time whether that chair had been
17 covered or padded yet?

18 A No.

19 Q Taped? You say you got a call from Kathy Grice, I
20 believe, that told you were being placed on ad-leave and giving
21 you the reasons about the doctor visit and about the chair not
22 being taped, correct?

23 A Correct.

24 Q And then you said you later had a conversation with Alan
25 on the same subjects, right?

1 A Correct.

2 Q Okay. Now, when you talked to Alan, you said generally
3 you had testified you gave him the same answers you gave her.
4 When you talked with either of them, did you explain why you
5 were not the one who would be appropriately taking the client
6 to the doctor?

7 A I don't remember.

8 Q Okay. Okay. And do you remember what -- do you remember
9 anything specifically you said to Alan about the chair and why
10 you hadn't taped it up?

11 A I know I told him that I wasn't informed about the chair.

12 Q Did you detect any difference in the amount of times that
13 management -- that Alan was visiting the homes where you were
14 after the union campaign started as opposed to before the union
15 campaign?

16 A He started showing up more after the union.

17 MR. JENSEN: I don't have -- oh, wait one second please.

18 Q BY MR. JENSEN: Oh, look at General Counsel 153 please, if
19 you would. It's dated December 30, 2011. Okay. And in that
20 first paragraph, it says that, "The client had stomachache pain
21 all morning, had requested several times to be taken to the
22 doctor." To your knowledge, is that true? He had asked
23 several times to go to the doctor?

24 A No.

25 Q And then in the next paragraph, the last sentence it says,

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1 "As of December 22, the chair has still not particularly been
2 repaired." Could you, I think you already testified, but could
3 you favor me with your response? When was that chair finally
4 padded up by Jessica?

5 A Later that day on the 22nd.

6 Q So it was on the 22nd?

7 A Yes.

8 Q Could you look at General Counsel's 155 for just a moment,
9 dated January 10. That is your response to Mr. Frey, correct?

10 A Yes.

11 Q You sent that to him, and then other than your letter of
12 termination, did you get any other response from Alan Frey or
13 KTSS to your letter?

14 A No.

15 Q Finally as to General Counsel's 156, your termination
16 letter, that was just a one page document, is that right? No
17 signature?

18 A Correct.

19 Q And I take it your response to one and two would be the
20 same as you've already told us here a number of times?

21 A Correct.

22 MR. JENSEN: I have nothing further of the witness, thank
23 you.

24 JUDGE POLLACK: Thank you.

25 MR. LOFLAND: Affidavit?

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BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 19

In the Matter of:

KITSAP TENANT SUPPORT SERVICES,
INC.,

Respondent,

and

WASHINGTON FEDERATION OF STATE
EMPLOYEES, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL 28, AFL-CIO,

Charging Party

Cases: 19-CA-74715
19-CA-79006
19-CA-82869
19-CA-86006
19-CA-88935
19-CA-88938
19-CA-90108
19-CA-96118
19-CA-99659

The above-entitled matter came on for further hearing pursuant to adjournment, before **Administrative Law Judge, Jay Pollack** at the National Labor Relations Board, Jackson Federal Building, 915 Second Avenue, Seattle, Washington 98174 on Thursday, September 12th, 2013 at 9:36 a.m.

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1 Q What are your job duties?

2 A I conduct administrative investigations on behalf of the
3 Department of Health. I also conduct compliance audits and
4 write reports, collect evidence for investigations.

5 Q How long have you worked for the Washington State
6 Department of Health?

7 A Just a little over seven years.

8 Q I'd like to ask you a few questions about your background,
9 if you don't mind my asking.

10 A Yes sir.

11 Q What was your prior occupation?

12 A I was a deputy sheriff at the Gray's Harbor County
13 Sheriff's Department.

14 Q Okay. How long were you a Deputy Sheriff?

15 A Well, with that Sheriff's Department, a little over 28
16 years.

17 Q Okay. And what was your position again?

18 A Well, I was a Deputy Sheriff. I retired as a Sergeant.

19 Q And will you please tell the Court what your duties were
20 in that position?

21 A Conducting criminal investigations, I trained other
22 officers, I supervised staff, including detectives and patrol
23 personnel, support staff. I acted for community affairs, I
24 mean, community affair events and otherwise as directed by the
25 Sheriff.

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1 A Upon my receipt or assignment of an investigation, I
2 normally would contact a complainant, I'd interview witnesses,
3 interview the respondents, which would be the subject of the
4 investigation. I would collect evidence, both documentary and
5 any other physical evidence that may be relevant. Then I would
6 write a, my report and submit to my supervisor for review and
7 then it would be forwarded to our case management teams for
8 final review and disposition.

9 Q Did there come a time, Mr. Johnson, when you were involved
10 in an investigation concerning two young ladies, employees of
11 KTSS, their names are Alicia Sale and Hannah Gates.

12 A Yes.

13 Q Okay.

14 MR. FIOL: Just need one minute off the record so I can
15 just hand out those documents.

16 JUDGE POLLACK: Off the record, please.

17 *[Off the record]*

18 JUDGE POLLACK: On the record, please.

19 Q Do you know, Mr. Johnson, how this complaint came to you,
20 to your office?

21 A It was a referral from the Department of Social and Health
22 Services.

23 **(General Counsel's Exhibit 158(a), marked for identification)**

24 Q Now looking at these documents, and I apologize, it was
25 stapled backwards, so I want you to flip over and look at

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1 what's marked for identification as General Counsel's Exhibit
2 158(a), a three page document, starting with "Facts."

3 A Yes.

4 Q And it's three pages. Will you just take one minute or
5 less or whatever you need so you can look at it?

6 A Yes. Okay.

7 Q Do you recognize this document, 158(a)?

8 A Yes, I do.

9 Q Okay. Can you tell us what this document is?

10 A This is a letter dated January 31st that I sent to the
11 Kitsap Tenant Support of Bremerton, Washington, to the
12 attention of Alan Frey, Corporate Manager.

13 Q And that first page is the --

14 A It's the fax receipt.

15 MR. FIOL: I move for the introduction of General
16 Counsel's 158(a) into the record.

17 MR. JENSEN: No objection.

18 MR. LOFLAND: I have the same objections I did as to the
19 letters that were introduced during Sales and Gates, that's it
20 is not relevant to the issues, different standard.

21 JUDGE POLLACK: What is the relevancy of this?

22 MR. FIOL: The relevance, it's all part of, it's a
23 continuation of yesterday's documents, Your Honor, where there
24 was a finding and this is the initial contact between the state
25 and this respondent and --

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1 contacting the Respondent KTSS?

2 A I contacted Mr. Frey.

3 Q Okay. And do you recall the first time you contacted Mr.

4 Frey?

5 A I talked to him on the phone on the 31st of January, 2012.

6 MR. LOFLAND: Can I ask the witness to keep your voice up

7 because it's --

8 THE WITNESS: Oh, I'm sorry.

9 A I contacted Mr. Frey by phone on January 31st, 2012.

10 Q Okay. And do you recall what was the basis of your

11 conversation with Mr. Frey?

12 A He was listed as the complainant party of the DSHS

13 Referral, so I contacted him to establish a point of contact

14 with the Kitsap Tenant Support Services and to also just touch

15 bases on what, what was going to be done, reason for the

16 complaint as far, you know, what were the elements of the

17 complaint and also to establish a port of contact for a request

18 of records.

19 Q Okay. And do you recall what he said to you?

20 A We just talked briefly about the patient had alleged, been

21 alleged to have been denied medical treatment by Ms. Gates and

22 Ms. Good.

23 Q And do you recall anything else that he told you about

24 what the allegation was?

25 A What the allegation was, was that Mr., or the patient

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1 complained to staff that he had stomach trouble and requested
2 to speak with, or to be seen by a physician.

3 Q Now after this conversation, did there come a time when
4 you actually went out and started your investigation?

5 A Well that was the beginning of the investigation right
6 there, but I went to Bremerton on the 2nd of February.

7 Q Okay. And what was the purpose of your trip to Bremerton
8 that day?

9 A To interview Ms. Gates, Ms. Sale, to interview the patient
10 and also to touch bases at Kitsap Tenant Supports, or Tenant
11 Services, to collect requested records.

12 Q And when you went out there, do you recall, well, where
13 did you go first?

14 A I met with Ms. Gates, I mean Ms. Sale, in the morning at
15 the Ferry Terminal Starbucks, and conducted an interview with
16 her.

17 Q And what was the purpose of that meeting with Ms. Sale?

18 A She was the Department of Health respondent in the
19 investigation and as such I interviewed her to find out her
20 side of the story of what happened and also to determine if
21 the, you know, where to, if there were other issues I needed to
22 deal with as far as what I was authorized to investigate.

23 Q And this investigation, was it memorialized in any kind of
24 writing at all?

25 A Yes. I taped her written statement and I'd also, in my

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1 report.

2 Q Then after you met with -- how long did you meet with Ms.
3 Sale that morning?

4 A About an hour, maybe an hour and a half.

5 Q Okay. Do you recall where you went next after that?

6 A I believe I, well I went to, I went to the local Toyota
7 dealership because the state car I was driving had some
8 malfunctions and then I went to, then after that I went to
9 lunch and then after lunch I went to Kitsap Tenant Support to
10 touch bases with Mr. Frey.

11 Q Okay. So how long were you over at, this the office of
12 Kitsap Tenant Support?

13 A Yes.

14 Q How long were you there for?

15 A Fifteen minutes maybe, somewhere around that. It was long
16 enough to just recap the allegations and then obtain the
17 records that I had requested.

18 Q Are these records the documents that they gave you?

19 A Yes.

20 Q Okay. In addition to that, did you have a conversation at
21 all at the office?

22 A Just the, oh, just a recap of the allegations to see if
23 there was any additional information and I believe I got the
24 address to the patient so I could go interview the patient.

25 Q And then did you then leave the office of Kitsap?

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1 A Yes.

2 Q And where did you go after that?

3 A I went and met with the patient at his residence.

4 Q I see and what was the purpose of meeting with the
5 president, excuse me, with the patient.

6 A With the patient. He was the only witness to the
7 allegation that besides Ms. Gates and Ms. Sale, so I wanted to
8 talk to him to see what he, what transpired and also to see
9 what his abilities, what type of witness he would make.

10 Q And do you recall about how long you spent, how much time
11 you spent with the patient?

12 A Probably about 20 minutes.

13 Q Was the patient, did the patient, did you take a statement
14 or did he give a statement?

15 A I did not take a statement from him.

16 Q Okay. About how long were you there for?

17 A About 20 minutes.

18 Q And then did you leave that house at that point?

19 A Yes.

20 Q And where did you go from there?

21 A I went back and met Ms. Gates at the Ferry Terminal
22 Starbucks in Bremerton and interviewed her.

23 Q And again, what was the purpose of meeting with Ms. Gates?

24 A To interview her as the respondent in the DOH
25 investigation.

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1 Q And about how long was that meeting?

2 A It was about an hour, an hour and a half, thereabouts.

3 Q And was there any statements given?

4 A Yes.

5 Q Okay. And what did you do with those statements?

6 A I put them into my case file and I wrote my report, a
7 summary of the interview with her.

8 Q Did there come a time -- and then did you leave, of the,
9 the Starbucks, was that where it was?

10 A Yes.

11 Q Did there come a time then when you went back again to
12 speak with the folks at KTSS at Kitsap Tenant Support, do you
13 recall?

14 A I may, I may have stopped by, I don't remember if I
15 stopped by after that, because there was, the records weren't
16 all ready initially, so I, and I can't remember if I picked
17 them all up on the first trip or if I picked them up on the
18 follow-up trip.

19 Q Okay. Now was that the end of your day out there at
20 Bremerton?

21 A Yes.

22 Q After that day, did you have any more investigation that
23 you needed to do in order to complete or any more interviews in
24 order to complete your investigation?

25 A Well, on February 16th, I met with a Ms. Lanzoratta who was

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1 the on duty house, head of household on the, when the alleged
2 or when the allegation took place or when the alleged incident
3 took place.

4 Q And where did that take place at?

5 A At the, in Silverdale at the Starbucks.

6 Q Okay. And do you recall how long that interview took?

7 How long that interview took?

8 A I think we spent about an hour and a half or two hours.

9 Q And was there anything that was memorialized and put into
10 writing at all?

11 A I took her handwritten statement and then again wrote my
12 report and summarized the contents of the interview.

13 Q Now after that day, after February 16th, you said?

14 A Yes.

15 Q All right. How much more was needed for you to then
16 finish your investigation and write a report?

17 A I was pretty well done at that time. I'd collected or
18 interviewed the people that were relevant and prepared my
19 report.

20 Q Okay. So can you tell us a little bit about this report,
21 that you wrote a report?

22 A Yes.

23 Q And who does this report go to?

24 A Well, when I finish my report it's sent to my supervisor
25 for review and then upon his completion of the review and

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1 signing off on it, then it goes to our case management teams
2 for review and then disposition.

3 Q I see. And in this particular investigation, when you
4 submitted your report, to your knowledge, was it ever sent back
5 to you for further investigation?

6 A No.

7 Q And to your knowledge, was it given to any other
8 investigator for further investigation?

9 A No.

10 JUDGE POLLACK: Did you ever take a statement from Mr.
11 Frey?

12 THE WITNESS: No.

13 MR. FIOL: Just one minute off the record again, Your
14 Honor.

15 JUDGE POLLACK: Off the record, please.

16 *[Off the record]*

17 MR. FIOL: Your Honor, off the record you just made a
18 comment that you're not prepared to receive the document that
19 hasn't been identified yet by the witness. I believe that once
20 the witness identifies the document for us, that it should be
21 accepted, that it be accepted --

22 JUDGE POLLACK: Okay.

23 MR. FIOL: -- under the public records exception.

24 JUDGE POLLACK: But the issue is not whether the state
25 believed that there was a violation. The issue is what

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1 A I'm sorry.

2 Q I'm not testing your -- you're doing a good job. And
3 this was an investigation regarding an NAR?

4 A Nursing assistant, yes.

5 Q All right. And what is an NAR?

6 A An NAR is a person that has basic training to assist a
7 nurse in various health care issues.

8 Q Including passing meds?

9 A Under a nurse delegated, they can pass, pass meds, yes.

10 Q And that was the scope of your investigation, whether
11 there was improper conduct that may affect the NAR, is that
12 correct?

13 A Yes.

14 Q And the referral to your department, the Department of
15 Health, and ultimately to you, came from DSHS, the Department
16 of Social and Health Services, is that correct?

17 A Yes.

18 Q Is that something that's unusual that happens?

19 A No, that is very common.

20 Q All right. And do you know what a mandatory reporter is?

21 A Yes.

22 Q Would you tell us, please?

23 A A mandatory reporter is an individual who is by statute
24 required to report to the Department of Health issues of
25 patient abuse, violation of the Uniform Disciplinary Act, any

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1 type of issue that may result in harm to a patient or violate,
2 anything that's violating Department of Health rules.

3 Q All right. And so, sort in summary, a mandatory reporter
4 has to issue to report issues of abuse, neglect and financial
5 exploitation under the statute?

6 A Also includes financial exploitation, yes.

7 Q All right. And they also have to report situations when
8 there is suspected abuse and neglect in financial exploitation
9 under the statute?

10 A Yes.

11 Q So if Mr., do you know whether Mr. Frey was considered a
12 mandatory reporter?

13 A I believe he, I believe he is because of the position he
14 holds with Tenant Support.

15 Q Okay. And in that case, if he suspected that there was
16 abuse of this client, he would have been required to report
17 that to DSHS?

18 A Yes.

19 Q And there would have been nothing wrong with that? That
20 was something that he had to do under the law and under the
21 statutes?

22 A There would be nothing wrong with that.

23 Q Okay. Now when you spoke to the, I think you call them
24 patient, we call them clients, but when you talked to the
25 gentleman in his home, could you describe him for me?

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1 A Yeah, head of household.

2 Q Physically. Tell me his approximate age, his physical
3 condition.

4 A If, may I refer to my report?

5 JUDGE POLLACK: Yes.

6 Q Do you need that to refresh your memory?

7 A Yes.

8 Q Then please do. You might look on page five to help you
9 out, last paragraph.

10 A Okay.

11 Q Do you remember the gentleman now that you've looked at
12 it?

13 A Yes.

14 Q All right. Tell me what your impression of him, how would
15 you describe him?

16 A Well as I said in my report, he was alert, he was
17 conscious, he was aware of his surroundings and he appeared to
18 be in good spirits.

19 Q Okay. And how about physically, how...

20 A Physically he was confined to a wheelchair, he had limited
21 mobility, he had limited communicating ability, he could
22 communicate through hand gestures, through nodding, through
23 grunts to yes, no questions. That was, that was pretty much
24 it. I don't know what else I put in there.

25 Q And during that interview, you asked him whether he had

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1 asked to go to a doctor?

2 A Yes, I did.

3 Q And he became confused when you asked him that, didn't he?

4 A Yes.

5 Q Did you tell Mr. Frey that, that you didn't believe this

6 particular patient or client would have been a good witness

7 because of his inability to communicate effectively?

8 A Something to that affect, yes.

9 Q All right. Thank you. Did you tell Mr. Frey that you
10 believed he, this patient had asked to see a doctor?

11 A I don't remember if I did or not. He, the patient was
12 unable to communicate that to me.

13 Q I understand, but I asked you if you, you asked, you told
14 Mr. Frey that you believed he had actually told it to that he
15 wanted to see a doctor?

16 A Yeah, I don't remember.

17 Q All right. Did you tell Mr. Frey that you would not have
18 wanted one of these two women to have cared for your relatives?

19 A No.

20 Q Okay. In the process that you go through, explain the
21 terms of preparing a report and submitting it, I don't know
22 whether the proper thing is up the chain of command or up the,
23 through the process that it goes, and you described what it
24 was. Are you the final decision maker on this?

25 A No.

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1 MR. LOFLAND: Thank you. I have no further questions.

2 MR. FIOL: Nothing, Your Honor.

3 MR. JENSEN: I have a couple.

4 **REDIRECT EXAMINATION**

5 Q BY MR. JENSEN: Mr. Lofland asked you some questions about
6 mandatory reporting, reporting of abuse and neglect or
7 financial exploitation. Is there a definition of abuse that
8 we're working from or is that, are we working from our common,
9 every day conception of what that is?

10 A Okay. I don't quite understand that. There is statutory
11 definitions --

12 Q Let me ask you this question, let me ask you this
13 question. When you're investigating whether there was some
14 potential abuse here, correct?

15 A Yes.

16 Q Okay. From your perspective, if the client asks to go to
17 the doctor and didn't get to go to the doctor for a stomach for
18 a few hours, would that, would that be abuse?

19 A Yes.

20 Q And you said you told Mr. Frey that this client wouldn't
21 be a good witness, when did you tell Mr. Frey that?

22 A That was after I'd interviewed him.

23 Q In terms of the date --

24 A I think it was, I believe it was the same day.

25 Q The same day as?

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1 MR. LOFLAND: All right. With, with that, that's fine.

2 JUDGE POLLACK: Okay.

3 MR. FIOL: So what I'd like to do --

4 JUDGE POLLACK: GC-2 through 39 is received.

5 MR. LOFLAND: I do, of course --

6 JUDGE POLLACK: GC-41(a) through (g) is received.

7 **(General Counsel's Exhibits 2 through 39 and 41(a) through (g),**
8 **received into evidence)**

9 MR. LOFLAND: The stipulation is meant as to authenticity
10 of the documents, not necessarily the relevancy. Those, I
11 think, can be argued later.

12 JUDGE POLLACK: Okay. All right, Mr. Fiol?

13 MR. FIOL: Thank you. General Counsel calls Sarah
14 Clifthorn.

15 JUDGE POLLACK: Raise your right hand, please.

16 **Whereupon,**

17 **SARAH CLIFTHORN**

18 **having been duly sworn, was called as a witness herein, and was**
19 **examined and testified as follows:**

20 JUDGE POLLACK: Please be seated. Please give us your
21 name and address for the record.

22 THE WITNESS: Sarah Clifthorn, 1929 Forest Hill Drive,
23 Southeast Olympia, Washington 98501.

24 JUDGE POLLACK: Go ahead.

25 **DIRECT EXAMINATION**

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1 Q BY MR. FIOL: Good morning, Ms. Clifthorn.

2 A Good morning.

3 Q Can you tell us what your occupation is?

4 A I work with the Washington Federation of State Employees,
5 ASCME Council 28 as the Public Service Program Supervisor.

6 Q And what are, what are your duties in that position?

7 A I work with our non-state employee and higher education
8 members doing legislative advocacy, policy advocacy,
9 negotiations and contract enforcement and internal mobilizing.

10 (Phone ringing)

11 JUDGE POLLACK: Off the record, please.

12 *[Off the record]*

13 Q Did I hear you say the first time you were involved in
14 contract negotiations?

15 A Yes, I am.

16 Q What, when you say you're involved in contract
17 negotiations, can you tell us what that is?

18 A So when we have a group of workers who is negotiating a
19 collective bargaining agreement, I serve as the chief
20 negotiator for the four groups of workers.

21 Q And how long have you been doing this type of work,
22 serving as a lead negotiator?

23 A With the Federation, three years.

24 Q And before the Federation?

25 A I worked with the UAW in California for five years.

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1 Q And did you do that type of work, contract negotiations?

2 A Yes.

3 Q And in doing this contract negotiations, what, what was
4 your role as the contract negotiator?

5 A I was a bargaining team member and then also a staff
6 negotiator.

7 Q And so, that's going to lead me to ask you about present
8 negotiations. Are you involved in present contract
9 negotiations with any parties?

10 A Yes, I am the chief negotiator for the workers at Kitsap
11 Tenant Services.

12 Q And when did you begin this particular assignment as the
13 lead negotiator for the, in this bargaining?

14 A After they were certified in March is when I began.

15 Q March of what year was that?

16 A March, 2012, as the chief negotiator, but I was involved
17 in the campaign from the beginning in 2011.

18 Q And what was your involvement in the campaign in 2011?

19 A I stay, I knew I was going to be the chief negotiator, so
20 I wanted to stay informed about what was happening.

21 Q I see. So in that position and now, after the
22 certification, you said in March?

23 A Right.

24 Q Did you have someone from Kitsap that you, your
25 counterpart with Kitsap that you would communicate with?

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1 A Yes, Mr. Gary Lofland.

2 Q And now, do you recall, after you received that
3 assignment, when did you first contact Mr. Lofland?

4 A In mid-April, 2012.

5 Q And if you look in front of you, there are a series of
6 documents that are marked GC Exhibits 2 through 41(g).

7 A Okay.

8 Q Does that, it says on General Counsel's 2, "Friday, April
9 20th?" Do you see that on the very top?

10 A Yes.

11 Q Okay. So is that the first time you contacted Mr.
12 Lofland?

13 A That's the first time we spoke, yeah, we, by telephone.

14 Q Okay. Do you recall how long this conversation lasted?

15 A About 20, 30 minutes.

16 Q Do you recall what you discussed in this conversation?

17 A I introduced myself, I explained briefly what our process
18 was for, you know, electing a bargaining team and that we were
19 hoping to agree on a schedule of bargaining dates and Mr.
20 Lofland informed me he would be going on vacation, but that he
21 would get back to me by e-mail.

22 Q You say that he informed you about the bargaining team?

23 A Yeah, that we would be electing a bargaining team of
24 workers.

25 Q Did you tell him how that process went?

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1 A I explained the, in terms of the process of we elect a
2 team?

3 Q Yes.

4 A Yes.

5 Q And can you tell us what you told him?

6 A We --

7 MR. LOFLAND: Your Honor, is this really relevant to the
8 issues at hand? The process of how they elect a bargaining
9 team?

10 Q I just want to know what you said in the conversation.

11 MR. FIOL: I think it's all relevant.

12 JUDGE POLLACK: To what?

13 MR. FIOL: It could very well be to discussing how and
14 when this team would meet together and, you know, how long, how
15 quickly they could get their team together. There is, later
16 on, Your Honor, there is evidence, Mr. Lofland stating that the
17 Union is not prepared to bargain and so if those accusations
18 are going to be made, it goes --

19 JUDGE POLLACK: All right. Go, go ahead.

20 A So I explained that we, well we would have meetings to
21 elect a bargaining team from the workers at KTSS, so that was
22 the process.

23 Q So did you, after that conversation then, did you have any
24 follow-up contact with Mr. Lofland?

25 A I sent him an e-mail.

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1 Q And is that General Counsel's 2?

2 A Yes.

3 Q All right. Now those proposed bargaining dates, was that
4 discussed during your conversation with Mr. Lofland?

5 A He'd asked me to send him the dates in writing, so I did.

6 Q Okay. And did he respond to this April 23rd e-mail that
7 you sent?

8 A No.

9 Q And what did you do after not hearing from him?

10 A I sent him another e-mail.

11 Q Was that General Counsel's 3?

12 A Yes.

13 Q Why don't you look at that for a second, if you don't
14 mind. It states here, in the second paragraph, "FYI, we are no
15 longer available to meet on May 30th and 31st."

16 A Yes.

17 Q Can you explain that?

18 A Yeah, because it is now May 14th, we knew that the workers
19 needed two-to-three weeks to be released from the Employer.
20 Their policy at that time was 21 days, so that wasn't going to
21 be enough time for us to confirm that the workers would have
22 time off, as well as we'd had to agree to other events during
23 that time, so.

24 Q Was this something that was discussed before with Mr.
25 Lofland? This thing about the, the time needed to --

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1 A Well, we had said in our, I had said in my original phone
2 call, that we wanted to agree to a set of dates so that we
3 could plan round those dates.

4 Q Okay. So after you sent this May 14th e-mail, did you hear
5 back from Mr. Lofland?

6 A No.

7 Q When did you hear back from him?

8 A I think I sent another, I think I sent another e-mail to
9 him.

10 Q Okay. And when was that? Was that Exhibit 4?

11 A Yes.

12 Q So now it's May 21, correct?

13 A Yes.

14 Q Now, after sending that e-mail, did you get any response
15 from Mr. Lofland?

16 A Yes, I did.

17 Q Let's look at that. So that's General Counsel Exhibit 5?
18 Do you recall, did you receive that before or after you sent
19 your e-mail?

20 A After.

21 Q After. Now if you take a look at that, was there any
22 issues that the Union made or promised -- strike that. Was
23 there any problems the Union had with what was in this letter?

24 A Did you say problems?

25 Q Yeah, problems that the Union had, that you had?

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1 A Yes.

2 Q Okay. What were they?

3 A We had, we had elected a team of five people and KTSS was
4 proposing only allowing two of those five participate and they
5 also was, was a board that was going to have to approve --

6 Q Is that on the second page?

7 A -- our -- yes, number five, that was going to have to
8 approve our tentative agreements.

9 Q Okay. Are you aware of any board that --

10 A No.

11 Q -- got to approve an agreement?

12 A No.

13 Q So upon hearing that, what did, what did you do?

14 A I called Mr. Lofland.

15 Q I see. When did you call him?

16 A That day, the 21st.

17 Q And what, how long was your conversation?

18 A Brief, 15, 20 minutes.

19 Q Do you recall what you discussed with him?

20 A Yes, I explained to him that we had elected a team of five
21 people that would, that needed to participate and that we could
22 be flexible about the times, but that those were the five
23 people on our team and so if they wanted to bargain during a
24 time when any of those five were working, we would need to
25 have, to get them released, all five of them released.

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1 Q Did you tell him who they were?

2 A At that time, I don't recall.

3 Q Okay. Speaking of that, who were the five members?

4 A Johnnie Driskell, Al Quadroche, Johnnie Driskell, Lisa
5 Hennings and Gary Martell and Ashley Klocke.

6 Q All right. So then after that conversation, did you have
7 any, what did you do next, I'm sorry, after that conversation
8 with Mr. Lofland on the 21st of May?

9 A I e-mailed Mr. Lofland.

10 Q When did you e-mail him?

11 A The following day, the 22nd of May.

12 Q Now is that an e-mail or was that a letter, is that...

13 A I e-mailed him. Sometimes I would attach a letter as a
14 pdf to an e-mail, so...

15 Q Yeah, I don't understand that kind of stuff, but, so, if
16 I, if I look at General Counsel's 6, was that the attachment to
17 the e-mail?

18 A Yes.

19 Q Okay. So just take a quick look at it. So this is, at
20 this point, identify the folks who were on the bargaining team?

21 A Yes.

22 Q And the schedules?

23 A Yes.

24 Q And now looking at this, you also mentioned that you
25 wanted to find out about this board, correct? If you look at

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1 the third paragraph?

2 A Yes.

3 Q Did he ever respond to that?

4 A Yes.

5 Q What did he, what was the response that he gave you and
6 when?

7 A That the --

8 Q But first, strike that. What was his response and then I
9 will ask you when.

10 A The, the Board of Directors at KTSS.

11 Q And when did he respond to that?

12 A I believe in an e-mail later that week.

13 Q Okay. Were you satisfied with that answer?

14 A No.

15 Q Why not?

16 A To the best of our knowledge, there was no board and is no
17 board at Kitsap Tenant Support Services.

18 Q Now you requested unpaid leave, correctly, Ms. Clifthorn,
19 for the bargaining committee members?

20 A For the members who were, would be affected by any
21 proposed bargaining times, yes, we asked for unpaid leave for
22 them to participate.

23 Q Why is that?

24 A Because those were the democratically elected members of
25 the bargaining teams and so there were times when all five of

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1 them were not working, when we proposed to meet. That if Mr.
2 Lofland and KTSS wanted to meet during any of their times for
3 work, we were requesting unpaid leave.

4 Q And how about at the bottom where it, where they made a
5 request for a training?

6 A Yes.

7 MR. LOFLAND: What exhibit are you on?

8 MR. FIOL: Oh, I'm sorry, General Counsel No. 6, it's the
9 --

10 MR. LOFLAND: Thank you.

11 MR. FIOL: -- first paragraph.

12 A Yes, we had a team training scheduled or we scheduled it
13 for June 4th, the day before Mr. Lofland had proposed meeting.

14 Q What's the purpose of this training?

15 A To familiarize the elected bargaining team members with
16 negotiation, for terminology, set up the process of
17 negotiations and what to expect and their role in communicating
18 with the, their fellow workers that was happening in
19 bargaining.

20 Q How long does it usually take you to train new folks on a
21 bargaining committee?

22 A A day.

23 Q A day? And did he respond to your request to have these
24 folks take that day?

25 A Yes, he did. Oh, to take off the June 4th?

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1 Q For the June 4th, I'm sorry, yes.

2 A Yes, he did.

3 Q Okay. And when was that, if you recall?

4 A I believe it was the end of that week, May 24th or 25th.

5 Q Now there is a letter dated May 23rd, exhibit, General
6 Counsel's Exhibit 7.

7 A Yes.

8 Q In that first paragraph there is a reference to the, a
9 conversation, is that the one on May 21?

10 A Yes, that's when I called Mr. Lofland that day.

11 Q I see. And after receiving this letter then, it says that
12 there would release three others, why they got written notice.

13 A I didn't take this to mean three others, I took this to
14 mean that they would release three people, not, not two, so the
15 previous letter had said that they released two people. I took
16 this to mean that they would, right, so that they would release
17 three more. In this case, I'm sorry, only if, if we met all of
18 these conditions, that's right, later they proposed actually
19 releasing three. In this letter it was three more could be
20 released but we had to meet these three conditions.

21 Q And if you look at the next page, page two, the last
22 paragraph. It says the Union, "The Union agrees to the
23 reimbursement," what was that all about?

24 A That was from page one when they proposed that we would
25 have to reimburse additional costs for covering the shifts.

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1 Q How would you do that?

2 A I'm not sure how we would do that.

3 Q So did, did you find a way to accommodate the Employer and
4 with their concerns on this?

5 A We proposed what we thought was meeting their concerns,
6 most of their concerns in terms of providing additional notice
7 and having our members work with the Employer to find coverage.

8 Q Can you tell us what that is, is that what's on General
9 Counsel Exhibit 8? Please take your time.

10 A Yes, that was our response.

11 Q So tell us about that. How would that work?

12 A The, we were proposing that the, you know, to set enough
13 time ahead of time so that they could bring in people who would
14 not cause overtime and also that, you know, the people who
15 would be missing the time could help with finding a
16 replacement.

17 Q Did you personally get involved in helping these
18 bargaining committee members to do that if they needed help?

19 A To find a replacement, no.

20 Q All right. Were they told to do that?

21 A We told them to work with their Employer on asking for the
22 time off.

23 Q I see.

24 A Now you said you had this training session scheduled for
25 June 4th?

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1 A Yes.

2 Q Where was that training schedule, training, where was that
3 training schedule at?

4 A Bremerton, Washington at the Fairfield Inn.

5 Q Okay. And can you tell us, was, what does the Union have
6 to do to set that up?

7 A We have a meeting and travel coordinator who makes
8 facility arrangements and travel arrangements for workers and
9 staff.

10 Q Now was there a need for travel arrangements in this
11 particular training?

12 A Yes.

13 Q And can you tell us about that?

14 A Two of the workers lived in Port Angeles and, so they
15 would be coming to Bremerton and if we were, if we were
16 planning on bargaining the next day or the day after, they were
17 going to need hotel accommodations.

18 Q So when were they going to come in to Bremerton from Port
19 Angeles?

20 A Sometimes the night before, sometimes the morning of and I
21 don't recall in this case what they chose to do.

22 Q And with, and for those two only they would be, is that
23 what you're saying, they're staying over as well?

24 A Right, so if they, instead of coming down Monday morning,
25 stayed Sunday night.

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1 Q I see. And any other people who live in that Bremerton
2 area --

3 A They attend for the day.

4 Q And in addition to that, the overnight rooms, any other
5 expenses that the Union would have to go through?

6 A The facilities, renting the facilities and the lunch
7 costs.

8 Q Now I do have something, if you look at General Counsel's
9 9.

10 A Okay.

11 Q And look at General Counsel's 10.

12 A Okay.

13 Q This is an e-mail that you sent to Gary Lofland at 4:09
14 p.m. on June 1?

15 A Yes.

16 Q And then it's, well, it's a request for information,
17 correct?

18 A Exhibit No. 10 is a request for --

19 Q I see.

20 A -- information that was attached to Exhibit No. 9.

21 Q Okay. Now the Exhibit 10 though is a different date. Why
22 is that?

23 A We had begun preparing it on the 22nd, but then the
24 surprise about the bargaining team and the disagreement over
25 the times we'd be bargaining, we didn't send it until the

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1 first.

2 Q Attached to this?

3 A Right.

4 Q So as of 4:09 p.m. on June 1, what was the, what was the
5 preparation for that training and for the bargaining?

6 A Well, we had prepared the training, the team had asked for
7 the time off and were planning on attending the training and we
8 had told them we'd be bargaining on the 5th or the 6th and then,
9 that in terms of actual, for preparation for negotiations, we
10 had prepared our proposals based on looking at what other union
11 contracts for similar work forces were like and best practices
12 from the industry.

13 Q Okay. So what day was June 1, do you recall what day of
14 the week --

15 A It's a Friday.

16 Q It was a Friday? So if you'd look at General Counsel's
17 Exhibit 11, can you tell us what that letter was all about?

18 A That's a letter that came attached to an e-mail on Friday
19 night, June 1st.

20 Q Was it sent before or -- do you recall about what time it
21 was sent?

22 A It was in the evening at some point.

23 Q Was it before or after your four o'clock --

24 A Afterwards.

25 Q After?

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1 A Right.

2 Q Okay. So what was this, what's the significance of this
3 letter?

4 A Mr. Lofland was still asserting that negotiations had to
5 occur between nine and five and that only two of our members
6 could participate and then on, and responding to our request
7 about what the board was on page two and then stated that they
8 were no longer available at all on the 5th or the 6th.

9 Q Do you recall, did, what time, and, exactly, do you recall
10 what day you received this?

11 A I received it either that Saturday or Sunday while I was
12 preparing for the training.

13 Q And why Saturday or Sunday?

14 A I'd left already on Friday when this came in.

15 Q What time would you normally leave?

16 A Five o'clockish.

17 Q And as of that time, you're saying you hadn't received
18 this?

19 A No.

20 Q Okay. So, how did you pick up this letter then?

21 A I went in to the office over the weekend to finalize and
22 print copies for the training on Monday.

23 Q So did it in any way affect the preparations that the
24 Union had?

25 A Yeah, we had to tell the team we wouldn't be bargaining on

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1 the 5th or the 6th then.

2 Q What preparations had you had for the 5th and 6th on
3 bargaining?

4 A I believe our meeting and travel coordinator had
5 tentatively reserved a room, since we were not sure. We didn't
6 want that to become an issue about why we couldn't bargain if
7 we didn't have a space.

8 Q So was it the responsibility, are you saying it is the
9 responsibility of the Union to get to, to pay for that in
10 advance?

11 A We hadn't reached, we hadn't reached that agreement, but
12 we wanted to make sure that their space was available, if we
13 could reach agreement on having our team participate.

14 Q I see. So what did you do then after receiving this
15 particular letter?

16 A I called my colleague, Tim Tharp and asked for his help in
17 contacting the bargaining team members.

18 Q Okay. Did you go ahead then, how did it affect your June
19 4th training?

20 A We went ahead with the training. We'd already made all
21 the arrangements and people had asked for the time off, so...

22 Q So let's go to that day of training.

23 A Okay.

24 Q Can you tell us, did everyone show up?

25 A Yes.

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1 Q I forgot the question, but, the, the training, the day of
2 training, was Johnnie Driskell there?

3 A Yes.

4 Q Okay. Do you recall, and did you know what Johnnie
5 Driskell's arrangement had been to --

6 A Yes, she said she'd found another worker to cover, no, to
7 switch shifts with her so that she had to, she had to leave
8 early to make it to that person's.

9 Q Okay. And to your knowledge, do you know if she was able
10 to leave early enough?

11 A Yeah, she did.

12 Q What do you remember?

13 A I believe that she left around three to make it to the
14 shift.

15 Q Okay. The other point as well as this, did, did you
16 proceed with the training that you thought was necessary to
17 have the team up to speed?

18 A Yes.

19 Q Okay. And was that accomplished that day?

20 A Yes.

21 Q So after having done that now, and you no longer had this
22 scheduled June 5th date, what did you do?

23 A When I was back in the office on Tuesday, I e-mailed Mr.
24 Lofland.

25 Q What was the purpose, sorry, what was the purpose of that

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1 e-mail?

2 A To continue the conversation about how we would agree on a
3 date that where all five of our team members could participate.

4 Q And by the way, is General Counsel's 13 the attachment to
5 the e-mail?

6 A The one I wrote to him? Yes.

7 Q Okay. Okay. Did you have any conversation, did you have
8 any conversation with him after he sent you that June 1st e-mail
9 about cancelling? If you recall?

10 A I think I may have called him at that point.

11 Q Okay.

12 A Before I wrote this.

13 Q Okay. I'm looking at General Counsel's 13 and all these
14 dates you suggested.

15 A Yes.

16 Q This also, the bottom part, this last paragraph.

17 A Yes.

18 Q But why, why did you write to him about Ms. Driskell?

19 A Ms. Driskell had been contacted to be disciplined on that
20 Monday and so we were concerned about, you know, the fact that
21 she'd been at a training that we'd provided the Employer notice
22 of that training, she'd asked for time off for that training
23 and so I was sharing with Mr. Lofland our perspective on what
24 had happened that day.

25 Q So after you sent this letter of listed proposed dates,

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1 suggested dates, did you get a response from Mr. Lofland?

2 A Well we, we'd also asked for the time off on that time and
3 I don't believe that we received a response immediately to that
4 request but we received a response to the, to the dates that we
5 had proposed.

6 Q And is that the General Counsel's 14, the June 8th memo?

7 A Yes.

8 Q And so, if you look at that last paragraph, on the first
9 page --

10 MR. LOFLAND: Talking about what --

11 MR. FIOL: The General Counsel's 14, sorry.

12 MR. LOFLAND: Thank you.

13 A The last paragraph on page one?

14 Q On page one, yeah.

15 A Okay.

16 Q It says, "June 5 and 6 dates were not available because
17 one, the Union was not ready." And my first question to you
18 was, was the Union ready?

19 A Yes.

20 Q And did you, and did he explain to you or did you ever get
21 a response from him as to why he thought the Union wasn't
22 ready?

23 A No.

24 Q And that says, "Two, and not completed training." What
25 was that all about? Had you done the training?

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1 A We completed the training on the 4th.

2 Q And is, the next point, number three, "Not made a request
3 for information."

4 A The request for information was to provide information to
5 assist us with negotiations. The initial proposals did not
6 require a response to the request for information. Those were
7 based on best practices in the industry and what we knew about
8 the Employer so far to date, so...

9 Q So explain, is that like a model you use?

10 A There's, you know, standard union contracts out there for
11 business systems where KTSS elsewhere in the country.

12 Q Okay. And were you prepared to give him this, did you
13 have a proposal?

14 A Yes.

15 Q Were you prepared to give it to him?

16 A Yes.

17 Q Okay. Did he ask for it?

18 A Not at this point. I mean, we didn't meet, so...

19 Q Okay. So if you look at General Counsel Exhibit No. 15
20 then, so you did now set a date, is that correct, February 13th?

21 A Yes, Mr. Lofland had proposed July 13th, which was a date
22 that we had proposed, he'd accepted it. And so we responded
23 that we, you know, would meet, assuming that our five elected
24 bargaining team members did receive confirmation that they'd
25 have unpaid leave.

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1 Q I'm sorry, did, I said February of 13, July, yeah.

2 A Oh, yeah, July 13.

3 Q That's the General Counsel's... all right, I said General
4 Counsel's 15, you know, but... so this was your response then
5 to June 8th letter?

6 A The prior communication from Mr. Lofland.

7 Q So I want to direct your attention now to General
8 Counsel's 16. This is the letter from Mr. Lofland to you?

9 A Yes.

10 Q And here there are, his response to your request for
11 information on May 22nd?

12 A It was actually June 1st, but yes.

13 Q Right, it's the attachment to the June 1st --

14 A Right.

15 Q So take your time, just quickly look at it. Did you, was
16 the Union satisfied with, with his response and the documents
17 that he sent to you?

18 A Well the, he said on page two, the response will be
19 supplemented, so that, you knew more, we were hoping that more
20 information was coming. Otherwise in number two --

21 Q The handbook?

22 A The handbook did not contain the, both job descriptions
23 that we'd asked for.

24 Q Okay. Anything else on item number two in the handbook?

25 A Well the organization chart was different than another

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1 organization chart that had been provided.

2 MR. LOFLAND: I'm sorry, you're dropping your voice.

3 A The organization chart was, I don't recall if it was on
4 this letter that we knew it was different, but I think later in
5 negotiations a different organization chart was provided.

6 Q I'm, this is an observation. Maybe if, to, the
7 microphone, maybe we could --

8 A Where is the microphone?

9 Q -- yeah, you can't see it, it's in that, the paper there.

10 A Oh, sorry.

11 Q No, that's fine. I should have made you aware of it, I'm
12 sorry.

13 A This, this doesn't move?

14 COURT REPORTER: I was picking you up.

15 THE WITNESS: Okay, great, sorry.

16 Q Okay. Now in reviewing this General Counsel's 16,
17 anything else that you found wanting?

18 A Well, there was other information that we'd requested that
19 wasn't received yet, and so --

20 Q And offhand, do you know, from looking at the letter, what
21 that was?

22 A Well, I remember we asked for job, for memos about job
23 expectations. We understood from the workers that Mr. Frey
24 from KTSS regularly provided memos that changed the
25 expectations for duties and so we'd asked for all of those

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1 memos. We also --

2 Q By who? Oh, I'm sorry, by the way, if it's helpful to
3 you, you can, do you want to go back to General Counsel's 10,
4 if that's what you're referring to, would maybe look at that
5 and see what was missing from his response.

6 A So on the current employee list --

7 Q Okay. There are bullet points. Can you just tell me --

8 A Right.

9 Q -- what bullet point?

10 A So we did not receive number four, the schedule with the
11 shift information.

12 MR. LOFLAND: I'm sorry, am I on the wrong number, because
13 --

14 THE WITNESS: General Exhibit No. --

15 MR. FIOL: On 10.

16 THE WITNESS: Sorry, what, but he asked him this, the
17 number of the bullets.

18 MR. LOFLAND: Let me finish.

19 THE WITNESS: Okay.

20 MR. LOFLAND: I'm wondering if I'm on the wrong document
21 because she says she's referring to Exhibit 10, bullet point
22 four and there is no number. Are you referring to the fourth
23 bullet --

24 THE WITNESS: The fourth bullet point, yeah.

25 MR. LOFLAND: Thank you.

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1 THE WITNESS: Yeah.

2 A So the fourth bullet point we did not have shift
3 information. The bullet point five, we did not receive the
4 vacation and accrual rates for each employee. For the, what is
5 that, one, two, three, four, five, six, the seventh bullet
6 point, we didn't receive transfers, promotions, movement in and
7 out of the bargaining unit. The eighth bullet point, "Job
8 Descriptions," about job expectations --

9 Q You did not receive, is that --

10 A The tenth bullet point about the memos and rules and
11 guidelines. The twelfth bullet point about, the form, we did
12 receive that eventually, actually, never mind. The third from
13 the bottom bullet point, the "History of wages and raises for
14 employees," --

15 Q For five years?

16 A Uh-huh. And the last bullet point, they refused to
17 provide and the second to last bullet point, we never received.

18 Q Information on training programs?

19 A Yes.

20 Q Okay, so just moving along then, General Counsel's 17,
21 this is just a confirmation on the negotiations are set for
22 Friday the 13th, correct?

23 A It did confirm that, yes.

24 Q Yes. If you would turn that document over to page two?

25 And if you look at paragraph number five.

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1 A Yes.

2 Q Had you asked them for proposals?

3 A Well, he had asked for our proposals and I had said that
4 that was not our practice and to provide those before we met
5 and I had asked if he was planning on providing us an initial
6 proposal ahead of time and he said that that was not his
7 practice either.

8 Q Please look at General Counsel Exhibit No. 18. And if you
9 look at the first paragraph, what was the Union's concern
10 regarding Ms. Driskell?

11 A Well we had requested confirmation that the bargaining
12 team would have Monday, June 18th off, but we hadn't received
13 confirmation of that request and Ms. Driskell had submitted a
14 written request to KTSS requesting that date, but she hadn't
15 received confirmation and given that she'd been disciplined for
16 the last training date, we were especially concerned about not
17 having confirmation that people would be released for that day.

18 Q So what did that do for your bargaining team meeting?

19 A We cancelled that meeting.

20 Q How about for the other folks? Was there confirmation for
21 Lisa Hennings and Gary Martell?

22 A Yes, I believe there was.

23 Q So it was just Johnnie Driskell?

24 A Yeah. We hadn't received it. They had received it as
25 individuals but we, the Union, had not received any

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1 confirmation from Mr. Lofland.

2 Q Now you, also in that e-mail, asked for more bargaining
3 dates as well, right?

4 A Yes, we were, as I stated here, that we were trying to
5 avoid their overtime costs and so we wanted to have a set
6 schedule that we could work around.

7 Q I see. So did he ever agree or respond to your additional
8 requests to meet again, to meet and bargain?

9 A Prior to July 13th?

10 Q Yeah.

11 A No.

12 Q Prior to, right, prior to, well this is June 5th, June 15th,
13 I'm sorry, e-mail. And you lay out a bunch of dates, did he
14 ever respond to that?

15 A I believe he responded that they wouldn't be accepting
16 them.

17 Q All right. So that takes us then to, I want to skip
18 through to General Counsel's 20. And that's the Union's
19 proposal dated July 13th, correct?

20 A Yes, these are, these are our initial proposals, although,
21 where does it have, yes, this is all of our initial proposals.

22 MR. FIOL: Your Honor, I want to just go off the record
23 for a minute. I'm seeing a problem ahead on these, this two GC
24 Exhibit numbers and I don't see them. I just want to find out
25 what happened so I'd like to go off the record.

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1 JUDGE POLLACK: Off the record, please.

2 [Off the record]

3 Q Now General Counsel's 20, do you see that? When --

4 MR. LOFLAND: Hold on, please. All right, I'm with you..

5 Thank you.

6 MR. FIOL: Okay.

7 Q All right, when was this prepared?

8 A The final version that we gave to him?

9 Q Yeah.

10 A The week before.

11 Q Okay. The week before what?

12 A We met on July 13.

13 Q Okay. And when did you hand it to, did there come a time
14 when you handed it to --

15 A The morning of July 13th we, we met for bargaining for the
16 first time and we provided each article that's included here in
17 20, each article to the Employer and walked through, you know,
18 broad strokes, what our perspective was and why we wanted these
19 --

20 Q There was no --

21 A -- issues.

22 Q -- let's talk about that. Where did you meet at?

23 A Where did we meet?

24 Q Yeah.

25 A In Bremerton, Washington at the Fairfield Inn.

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1 Q And what time did these negotiations start?

2 A Nine a.m.

3 Q And did it go through till five o'clock?

4 A No, it did not.

5 Q Do you remember what time it ended?

6 A Around 11:50 a.m.

7 Q What time was, what time did the parties agree initially
8 that these meetings would last?

9 A Five p.m.

10 Q From nine-to-five?

11 A Yes.

12 Q Okay. So it started at nine, who was there for
13 representing the Union?

14 A Myself, my colleague Tim Tharp and the elected bargaining
15 team that I had listed earlier.

16 Q Okay. How about for Respondent?

17 A Mr. Lofland, Mr. Al Frey, Ms. Kathy Grice and Ms. Mieka
18 Gergely or Middleclub, and I can't remember. I think her last
19 name changed.

20 Q So you say it ended 11:53, what did, what did you remember
21 doing then?

22 A What did I do at 11:53?

23 Q Well no, no, I'm sorry. What did you do during that
24 period of time from 9-to-11:53?

25 MR. LOFLAND: Asked and answered.

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1 MR. FIOL: No, it wasn't --

2 JUDGE POLLACK: Overruled. Go ahead.

3 A Excuse, the question again, I'm sorry. What did --

4 MR. FIOL: What did --

5 JUDGE POLLACK: What did you do --

6 MR. FIOL: -- do between nine and 11:53?

7 A Oh, well from 9-to-10:30, we walked through each of these
8 proposals, like I just said and then at 10:30 the Employer
9 asked to caucus.

10 Q Okay.

11 A And so we caucused for 20 minutes and then we got back
12 together around 10:50 and the Employer said that because they
13 hadn't received them ahead of time that they weren't prepared
14 to talk about them further. We had an initial conversation
15 about setting future dates and then we caucused again around
16 eleven and got back together around 11:35, at which point we
17 agreed on additional, two additional bargaining dates of August
18 6 and August 15th and then we ended. The Employer had no
19 questions about any of our proposals and --

20 Q Do you, do you recall if the Employer representative said
21 anything to you, made any, discussed anything with you about
22 your contract proposals?

23 A Well, we presented each article and then asked if the
24 Employer had questions and after each one they said no. And
25 then when they returned from the first caucus, they said that

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1 they weren't prepared to discuss each of these articles at that
2 time and that we were done for the day.

3 Q And they said then, they didn't discuss anything about the
4 proposals?

5 A No.

6 Q Were there notes taken at this meeting?

7 A Our team took bargaining notes, yes.

8 Q How about their team?

9 A Not that we saw, no.

10 Q When you said you set dates, were dates set for the next
11 meeting?

12 A Yes, we agreed on August 6th and August 15th, with the
13 Employer's caveat that they might have to cancel August 6th
14 because there was an audit scheduled around that, before that
15 week or something.

16 Q Can you please take a look at General Counsel Exhibit No.
17 21.

18 A Yes.

19 Q Can you tell us what that's about?

20 A So we had still not received the job description for one
21 of the two job classes.

22 Q What, what job classes?

23 A The head of household, HOH. And we also asked for
24 additional information about the job postings for head of
25 households.

1 Q Did you ever get a response to any of these two items that
2 you requested?

3 A We, yes we did.

4 Q And, on both?

5 A On the, not the memos, but we got the description and we
6 got the job postings.

7 Q Now I need to ask you about the next exhibit, it's General
8 Counsel Exhibit 22.

9 A Yes.

10 Q This is the Employer's proposal?

11 A This was their initial proposal, yes.

12 MR. LOFLAND: Did you say 26?

13 MR. FIOL: Twenty-two.

14 MR. LOFLAND: Twenty-two.

15 Q When did you receive that?

16 A The Friday before we met for negotiations on Monday.

17 Q And did you have time to review it for the negotiations on

18 --

19 A Well I made time.

20 Q Excuse me?

21 A I made time.

22 Q Okay. So let's go to that meeting on August 6th.

23 A Okay.

24 Q And what time did that meeting start?

25 A Nine a.m.

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1 Q Okay. And can you walk us through that meeting? What
2 time did it end, do you recall?

3 A One-forty five p.m.

4 Q One-forty five p.m.?

5 A Yes.

6 Q Were there any breaks taken during the, that period of
7 time?

8 A Yes there, from around 12-to-1:30.

9 Q 12-to-1:30?

10 A Yes.

11 Q Okay. How about before that? Were there breaks taken
12 from 9-to-12?

13 A I don't recall right now.

14 Q Can you tell us, do you recall, what was discussed during
15 this session?

16 A The Employer presented their proposal and we asked our
17 initials questions about that, the proposal.

18 Q What -- oh, okay, what were your initial questions about
19 their proposal?

20 A We had many questions, I mean, so...

21 Q Do you recall some of the questions that you had?

22 A We had questions about their Employer rights, which they
23 call management rights.

24 Q Okay. Let's, let's stop there.

25 A Okay.

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1 Q What questions did you have on manage -- on their proposal
2 on management rights?

3 A Well we first asked if they would create bullet points
4 which they obligingly did the next time, so that we could break
5 up the paragraphs. I don't remember what page it was.

6 MR. LOFLAND: I'm gonna, I'm gonna please ask, you're
7 looking down, speak up.

8 THE WITNESS: Okay.

9 Q And if you want, if you need a little time to, just ask
10 us, you know. Are you looking for the particular article?

11 A I just found page seven, yeah, Employer rights.

12 Q I see. Okay. So, well, what did, what do you recall
13 discussing on --

14 A Well our initial read of the Employer rights was that it
15 would sort of nullify a lot of the other articles that we were
16 proposing. They were so broad and expansive.

17 Q What articles did you believe that it was nullifying?

18 A The ability to, so of transfer employees to protect
19 bargaining unit work to be done by bargaining unit, discipline
20 was affected, transfers.

21 Q So, excuse me, do you recall exactly what, well, what was
22 the problem with discipline?

23 A Not within management rights or their discipline article
24 within --

25 Q Both.

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1 A In general, their discipline article was at will. I mean

2 --

3 Q I see. And was that somehow incorporated into their
4 management rights?

5 A It, the Employer right, their management rights would have
6 affected --

7 Q I see.

8 A -- the at will and discipline.

9 Q You just mentioned at will, was that a topic that was
10 raised?

11 A Yes, they proposed a separate article on it.

12 Q Okay.

13 A It was our perspective on at will and was contained within
14 our discipline article.

15 MR. LOFLAND: Say again, please.

16 A Our perspective on at will, which is that we did not want
17 it, was within our discipline article, but they had proposed
18 two separate articles, so...

19 Q Okay. So what was your position on at will?

20 A We had proposed having, not having at will.

21 Q Okay. Any reason why?

22 A It's important to, I mean, to our Union to have at will in
23 a Union contract.

24 Q Okay. So you looked at the management rights provision?

25 A Yes.

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1 Q You also mentioned the at will, which is in the
2 discipline?

3 A Uh-huh.

4 Q Anything else do you recall --

5 A Well, there was --

6 Q -- responding to?

7 A There was, you know, no Union security, there was a
8 requirement that we spend six million dollars on lobbying,
9 there was a lack of, there was no arbitration and there were
10 two new policies that we, that would have been new policies for
11 the work place, further restrictions on the workers. There
12 were also wage take aways and there was also a proposal to
13 eliminate one of our two job classes.

14 Q Which job classes?

15 A The head of household.

16 Q I see. Would you look at page 21 of this proposal?

17 A Okay.

18 Q Do you recall having any particular problem on the very
19 last section of that suspension (voice trails off)?

20 A Yes, we, during our brief time in negotiations with the
21 Employer, we'd already had a couple of employees suspended
22 without pay, so we were very concerned about their willingness
23 to do this and for extended periods of time that caused undue
24 hardship on the workers.

25 Q You mentioned the HOH. What was the Union's position

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1 regarding HOH?

2 A That the issue had been settled at the recognition
3 hearing. The head of households were in the bargaining unit
4 and were clearly in the bargaining unit.

5 Q Did anyone from the management side respond to that?

6 A They, yes.

7 Q What, who responded?

8 A Well, both Mr. Frey and Mr. Lofland responded, but I
9 remember Mr. Lofland saying that we were at, well actually that
10 was, that they were, you know, going to eliminate the head of
11 household and at that time, I mean, there were, that was it at
12 that time.

13 Q And you said it ended at -- what time did it end?

14 A One forty-five.

15 Q What time was it scheduled to end?

16 A Five o'clock.

17 Q Was there a reason why, to your knowledge, that it ended,
18 excuse me, that it ended so early?

19 A There was a lot of expansive article proposed and it was
20 not a lot of willingness to discuss the issues at that time.

21 Q Who ended it?

22 A The Employer said that we were done at, before lunch, but
23 then agreed to come back after lunch to set dates.

24 Q What was the Union's position on ending at that time?

25 A That there was clearly a lot of, a log of need to discuss

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1 these proposals.

2 Q So this was August 6th?

3 A Yes.

4 Q Now it ended at 1:53. Was there an understanding that you
5 would be meeting again?

6 A I said 1:45, but yes --

7 Q Oh, whatever.

8 A -- there was, we had agreed on August 15th. And I believe
9 at the August 6th meeting we then also set the days for
10 September, September 6th and September 17th.

11 Q Okay. So you set your schedule for August 15th?

12 A Yes.

13 Q What, was there any kind of arrangements that, whose turn
14 was it, that you recall, having to make arrangements for that?

15 A I don't recall.

16 Q Okay. So, then look at General Counsel's No. 23, that's
17 the next day. See that letter he accuses the Union of not
18 taking notes?

19 A Yes.

20 Q Is that true?

21 A No.

22 Q Who took notes?

23 A Well we always had a designated note taker from the
24 bargaining team and then I typically took my own notes as well
25 as my colleague, Tim Tharp took notes.

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1 Q How about for management? Were they taking notes?

2 A Up until this point, no, we had noticed people taking
3 notes.

4 Q They didn't take notes on August 6th?

5 A Not that we noticed, no.

6 Q So if you look at General Counsel's No. 13, 24, sorry.

7 A Twenty-four? Okay.

8 Q They cancelled then the August, the planned August 15th
9 bargaining session, right?

10 A Yes.

11 Q Can you tell us, were you prepared for this?

12 A No, we had thought that this, we had understood the audit
13 to be finished and that the August 6th was the one that was up
14 for debate, so we were, we thought we were full steam ahead for
15 the 15th.

16 Q Did anyone between August 6th and receiving this e-mail,
17 did anyone tell you that there was a change?

18 A From the Employer?

19 Q From anyone, yeah.

20 A No.

21 Q General Counsel's 25 is really something that was, that
22 you were copied on, correct? Well, sorry, was sent to Tim
23 Tharp to you, correct?

24 A Yeah, to myself and to Mr. Lofland.

25 Q I see. And was complaining about the --

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1 MR. LOFLAND: The document speaks for itself. Counsel
2 doesn't have to read it.

3 MR. FIOL: I'm allowed to just asking questions, if you
4 know.

5 MR. LOFLAND: Well, Your Honor --

6 JUDGE POLLACK: All right. Ask your next question,
7 please.

8 Q The next, the next document here --

9 A The, Exhibit 25?

10 Q No, it's Exhibit 26.

11 A Okay.

12 Q There is a request for information.

13 A Yes.

14 Q And just on that, were the requests that, were they added
15 to the request they provided to the Union?

16 A Yes.

17 Q Okay.

18 A Well, it was required, it was provided that one time. The
19 request that we receive that information any time someone was
20 hired was not.

21 MR. JENSEN: I couldn't hear your answer because there was
22 a cough. Can you repeat your answer?

23 A Yeah, so we had asked for the information on an ongoing
24 basis anytime an employee was hired. We received the
25 information one time, but not on an ongoing basis.

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1 Q And by the time you sent this e-mail, you had already had
2 a date, a next date scheduled for bargaining?

3 A I thought we had set both days in August, but I was
4 clearly incorrect. We had only set the first date on September
5 6th, so...

6 Q Okay.

7 A I knew we'd set one day in September for sure.

8 Q Now is there a reason why you only set one date?

9 A Well, in July, Mr. Lofland had said that we were having
10 the unfair labor practice hearing, this hearing in September,
11 so he would be unavailable for the rest of September, but...

12 Q So the, when was the next bargaining then? The next
13 bargaining session?

14 A September 6th.

15 Q And who was, were the same parties there again?

16 A The same parties from the Employer were present and from
17 our side, everyone except for Gary Martell was present, who had
18 been present in July and August.

19 Q And was there a reason why Gary Martell was not present?

20 A He was actively seeking new work because I think he had
21 been fired by that point.

22 Q What time did that bargaining session begin?

23 A Nine a.m.

24 Q And what time was it scheduled to last to?

25 A Five p.m.

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1 Q Okay. And what time did it actually end?

2 A Around three o'clock, p.m.

3 Q Okay. Do you recall what topics were discussed, if any,
4 at that particular meeting?

5 A Well, the one that we spent a lot of time discussing was
6 the head of household position.

7 Q Let, let's, let's discuss that. What do you recall being
8 discussed on the head of household position?

9 A Well we specific, we were asking the Employer a lot of
10 questions about what their intentions were since they had
11 proposed eliminating the head of household position and then at
12 the same time hadn't included, it wasn't clear whether their
13 other proposals included head of household or if they were
14 negotiating at all for head of household and so we asked the
15 Employer to clarify that and Mr. Lofland stated that they were
16 bargaining only over the elimination of head of household, but
17 that they would continue posting the head of household jobs
18 until such time as we reached impasse and they imposed their
19 final offer.

20 Q What was the Union's position on that?

21 A That it was very early for the word impasse to come up and
22 that we wanted to bargain over the head of household positions
23 with all of the articles, not just over the elimination of head
24 of household.

25 Q So you mentioned that that was one of the topics that was

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1 discussed, correct?

2 A Yes.

3 Q What other particular issues were discussed at this
4 meeting, at this bargaining session?

5 A The Employer also provided the, what they call management
6 rights listed --

7 Q Management's?

8 A -- listed in the order which was obliging of them.

9 Q And what was the Union's position on management rights?

10 A Well, since the content of the article hadn't changed, we
11 were still very concerned about the substance of that article.

12 Q Any other topics that were discussed, if you recall?

13 A I don't recall at this moment, no.

14 Q Okay. So when this ended, what was the schedule then
15 after this particular meeting then?

16 A We had, we had reached an agreement to meet again on
17 September 17th.

18 Q On September 17th?

19 A Yes.

20 Q And did the parties indeed meet on September 17th?

21 A Yes, they indeed, they met that day.

22 Q And what was the arrangement as to the hours that you were
23 gonna meet?

24 A Nine-to-five, the same.

25 Q And what, how long did that meeting last?

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1 A I believe it went to, shortly before noon, maybe 11:40
2 a.m.

3 Q And again, General Counsel's 27 is dated 9/14?

4 A Yes.

5 Q And these are counterproposals?

6 A Yes, we provided these in advance of the September 17th
7 bargaining session.

8 Q Do you recall, do you recall discussing your
9 counterproposals that day on September 17th?

10 A We did not discuss all of them, no.

11 Q And why not?

12 A The Employer didn't want to discuss, didn't want to
13 discuss some of them. They said that they were, they were not
14 going, not willing to discuss them as they, as we had written
15 them.

16 Q Did they say why?

17 A They, for, depends on which article it was. I mean, they
18 had a different reason for the different ones, but for some of
19 them, you know, Union security, we're not going to consider
20 that, there was seniority, they said that --

21 Q What did they say about seniority?

22 A They weren't going to consider seniority, that it didn't
23 fit in that work environment.

24 Q What other topics or articles did they not want to
25 discuss?

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1 A Let me think, I just have to keep the meetings straight.

2 Q Sure. If you'd like, maybe you can take a look at your
3 proposal to see if it might refresh your memory as to what was
4 discussed.

5 A Right. Okay. I remember part of the reason they, they
6 ended early was that we --

7 MR. LOFLAND: I'm sorry, that's not responsive to the
8 question. I believe the question is whether the articles were
9 discussed.

10 THE WITNESS: Okay.

11 A So I don't recall the, all of the articles that we
12 discussed that day, no.

13 Q Other than the ones you just mentioned?

14 A Right.

15 Q So you was gonna say, what was the reason why you, you,
16 they, someone ended early, right?

17 A Well it, yes, the meeting got pretty heated and at one
18 point Mr. Frey said that he, the Union was made up of people
19 who were the loudest squawkers and so, you know, at that point,
20 there wasn't really, it got pretty heated.

21 Q You say it got heated, what do you mean?

22 A Well it, I mean, you know, describing the Union as a group
23 of, you know, loud squawkers and that we wanted to sort of add
24 bureaucracy and that they weren't going to add bureaucracy, so
25 there wasn't a lot of room to continue the discussion.

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1 Q Did he mention what he meant by bureaucracy?

2 A Our proposals were going to add bureaucracy, so...

3 Q Did he say which ones?

4 A There were, many were listed.

5 Q So what was the Union's position on ending this session
6 prior to five o'clock?

7 A It was hard to be the only side sort of asking questions
8 about where we could go, so, you know, we didn't want to end
9 early at all, but, you know, when you're met with, we're not
10 going to consider that repeatedly, it's, there's not much room
11 to move.

12 Q So at some point when you left, did the parties agree to
13 meet again?

14 A I don't recall if we had a date set at the end of that
15 meeting or not.

16 Q But did, did, you did meet again on October 16th, correct?

17 A Yes, we did.

18 Q And if you look at General Counsel's 28, this e-mail, not
19 only are there --

20 A I'm sorry, I'm not there yet.

21 Q Oh, okay, sorry.

22 A Okay.

23 Q There is, it says that they attach head of household and
24 revised proposal. So there, I guess that was the information
25 on head of household duties?

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1 A Yes.

2 Q What do you recall about that, what they sent you
3 regarding head of household duties?

4 MR. LOFLAND: Well, Your Honor, the best evidence is the
5 attachment to this rather than memory, if Counsel chooses to
6 submit it.

7 JUDGE POLLACK: I agree.

8 Q Right, no, was there a problem, was there a problem, you
9 know --

10 A With head of household duties?

11 Q Yeah.

12 A Yeah, I think it was called, that they had included
13 supervisory duties that weren't, we felt reflective of what the
14 actual duties were.

15 Q And then the revised proposal, is that --

16 JUDGE POLLACK: Do you have the attachments?

17 THE WITNESS: I do, but I don't know --

18 MR. FIOL: I have, I have the, I have this attachment,
19 which is the Employer proposal. I do not. We can get to that,
20 so, let's just go to the next one.

21 Q Is this the revised proposal, the General Counsel's 29?

22 A Yes.

23 Q So there was a meeting on the 16th of October, correct?

24 A Yes.

25 Q And who was there?

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1 A Everyone from the Employer's side was still there and from
2 our side, myself, Tim Tharp, Lisa Hennings, Al Quadroche and
3 Ashley Klocke.

4 Q And what time did that meeting start?

5 A Nine a.m.

6 Q Excuse me?

7 A Nine a.m.

8 Q And when did it end?

9 A I believe that one went almost to five.

10 Q Okay.

11 A Yeah.

12 Q So, do you recall what topics, what issues were discussed
13 at that meeting?

14 A Yeah, we discussed Employer rights.

15 Q Okay. Let's --

16 A Yeah.

17 Q -- take them one at a time, Employer, management rights?

18 A Yes.

19 Q What was the Union's position on management rights?

20 A Well, we continued to feel that the Employer rights or
21 management rights, as they called it, would really, different
22 parts of that would have nullified everything else we were
23 working on in the contract.

24 Q And any other proposals, what other proposals did the, do
25 you recall being discussed?

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1 A We discussed the at will and discipline, layoff and
2 recall.

3 Q Okay.

4 A The employee, the personnel files.

5 Q Okay. So let's, let's take them one item at a time then.
6 You said that at will?

7 A Yes.

8 Q Okay. Was there any change from their earlier position on
9 at will?

10 A I don't recall there being a change, no.

11 Q Okay. And was there any discussion on at will?

12 A Yes.

13 Q What was that?

14 A That, I'm trying to keep the meetings, remember the
15 different meetings. I mean, I don't recall, other than what
16 I've said already about our positions on at will, I don't
17 recall the specific conversations at this point.

18 Q Do you recall maybe a discussion on layoffs?

19 A Yes.

20 Q Okay. What do you recall being discussed on layoffs?

21 A Well, with layoffs, we, the layoffs article and sort of
22 the personnel files led into a conversation about where
23 employee morale was at that time. And we, we talked about why,
24 why workers really needed protections at the work site and so
25 we were concerned with layoff and recall and sort of what

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1 rights people had at the workplace.

2 Q And was there a response to what you, about what you said
3 about workers' rights to work place?

4 A There were a couple of responses, I mean, one, I mean when
5 we were discussing the layoff, Mr. Frey said that, that the
6 Union had created a wedge between him and his workers and so
7 that, you know, at that, we said that was a problem and that we
8 wanted to fix that and he said that there was nothing we could
9 do at that point, that the wedge had already been there for a
10 year.

11 Q Do you recall Mr. Frey or Mr. Frey saying anything else
12 related to that?

13 A Well, when we were discussing, we sort of moved into
14 personnel files and people wanting to be able to see their past
15 disciplines and understand or evaluations and what was in their
16 personnel files and Mr. Frey stated that if people wanted more
17 write-ups, they could have them, starting then.

18 Q Let me, if you don't mind, if we could go back. In
19 preparing for these meetings, did, did the Union, say
20 specifically for the October 16th meeting, what did the Union do
21 to prepare for sitting down and talking to the management?

22 A Well, especially --

23 MR. LOFLAND: Your Honor, I, I object. What the Union did
24 to prepare in a meeting has no relevancy or material to the
25 issues at hand.

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1 the Employer that are at issue.

2 MR. FIOL: But there are also people on, on this
3 bargaining team that are employees and her earlier testimony
4 was that people who were on this committee tend to be the
5 liaison between the Union and the other employees. So,
6 anything that -- wait. Anything that may have happened before
7 that's related to that, I would argue has relevancy, if it came
8 up or is anyway connected to what happened on the 16th.

9 JUDGE POLLACK: Well then, just go to what happened on the
10 16th.

11 MR. FIOL: All right. Well, we were and I went off track,
12 so that's my fault. So let's continue on with the 16th.

13 Q You were talking about personnel files and then you
14 mentioned that Frey said there would be write-ups.

15 A Yes.

16 Q What was the write-ups about?

17 A Well, at this point, you know, the write-ups, we didn't
18 receive copies of the write-ups from the Employer, but workers
19 told us after this meeting that there were write-ups that came.
20 When he made that statement, it was a general statement. He
21 didn't say what the write-ups would be about.

22 Q Oh, so you learned shortly afterwards that people were
23 written up?

24 A Yes, subsequent to the 16th meeting.

25 Q I see. Okay. And how did you find that out?

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1 MR. LOFLAND: Objection. Neither relevant or material.

2 MR. FIOL: Fine.

3 Q I'm satisfied with your earlier answer.

4 A Okay.

5 Q Okay. Do you, you mentioned layoffs and recall, correct?

6 A Yes.

7 Q Do you recall any comments made to you about your proposal
8 on layoffs and recall?

9 A Comments made to us?

10 Q To you, at, on October 16th at this --

11 A I don't recall right now.

12 Q Okay. Would there be anything that you could look at that
13 would help you recall what may have been said on this issue?

14 A The Affidavit I gave to the NLRB.

15 MR. FIOL: May I approach the witness, Your Honor?

16 JUDGE POLLACK: Go ahead, you may.

17 MR. LOFLAND: May I see it before it is given to the
18 witness?

19 JUDGE POLLACK: Of course.

20 A Okay.

21 Q Now do you, do you recognize that document, Ms. Clifthorn?

22 A Yes, I do.

23 Q And what is that document?

24 A Sarah Dunn, at the NLRB, took an Affidavit from me last
25 spring.

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1 Q Okay. And if you look at the last page?

2 A The last page?

3 Q Yes. And is that the day you gave the Affidavit?

4 A Yes.

5 Q Now if you --

6 JUDGE POLLACK: What's the date?

7 THE WITNESS: March 4th, 2013.

8 JUDGE POLLACK: Thank you.

9 THE WITNESS: Uh-huh.

10 Q BY MR. FIOL: And if you take a look at page 22?

11 A Okay.

12 Q And that's a point? If you can please read paragraph 87
13 to yourself.

14 A Okay.

15 Q And can you turn it over now?

16 A Okay.

17 Q Thanks. Now having read that document, does that refresh
18 your memory as to what may have been said regarding layoffs and
19 recall?

20 A Yes, it does.

21 Q Okay. Can you please tell us what was, what was told to
22 you regarding layoffs and recall?

23 A That what, that what we had proposed didn't have any value
24 and so our proposal had no value to the Employer.

25 Q I think I'll just take that back. And anything else that

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1 you recall of issues that you recall being discussed on this
2 meeting, at this meeting?

3 A Well there was a new proposal around use of cell phones
4 that we discussed. We also discussed Union security.

5 Q What was discussed on Union security?

6 A The Employer said that they, that they had a company, that
7 their company was going to require \$10 per withdrawal, or not
8 withdrawal, per withholding, to withhold, to withhold Union
9 dues and said that that wasn't something that they were going
10 to do.

11 Q And what was your response to that?

12 A That that seemed outrageously high in our experience, that
13 we hadn't encountered anything like that before. And we were
14 also confused because Mr. Frey used the word, he called it a,
15 he didn't, he didn't call it a withholding, he called it
16 something else that made us concerned, that he'd asked about,
17 he'd asked maybe a question of the company incorrectly or
18 something. So...

19 Q What do you mean, I don't --

20 A He didn't, we had asked, you know, what would, they had
21 said that it would cost \$10 and instead of saying per
22 deduction, it was, he referred to it as a, like a, when you
23 have a lien or something like that. He called it something
24 else, so that we thought maybe that was why it would be so
25 expensive, but \$10 was just not, in our experience, something

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1 that was customary.

2 Q And in addition to those items, do you recall anything
3 else, contract articles that were discussed?

4 A So he said, let's see, we already talked about personnel
5 files, layoff, cell phones, Employer rights. I don't recall
6 which other ones we discussed on October 16th.

7 Q Okay, I'm fine. So this, this meeting ends?

8 A Yeah.

9 Q Now as, as, as of that date, were there agreed upon dates
10 which would meet again to continue these negotiations?

11 A No, there were not.

12 Q Okay. What was your understanding when you left that
13 meeting on October 16th, that you would be meeting again?

14 A That, well that we would be talking on the phone or e-
15 mailing to set some dates the next week.

16 Q For the next week?

17 A No, no, that we would be talking on the phone or e-mailing
18 the next, you know, after this meeting --

19 Q I see.

20 A -- to set dates for next, the future dates.

21 Q So that takes us to General Counsel's 30. Do you see
22 that?

23 A Yes.

24 Q Okay. And as you said that there was, agreed that you
25 would be talking next week. So why, why did you send these e-

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1 mails?

2 A I had not heard back from Mr. Lofland, so I was trying to
3 contact him to set the dates that we talked about setting.

4 Q Okay. So that's on October 22nd, correct?

5 A I first e-mailed him on October 22nd.

6 Q And I see that, the next one is October 25th?

7 A That's when I e-mailed him again, yes.

8 Q Between October 22nd and October 25th, had he contacted you
9 at all?

10 A No, he had not.

11 Q Okay. And then you see on the top, and he responds very
12 quickly.

13 A Yes.

14 Q Okay. Were you aware of anything dealing with any injury
15 that he had?

16 A Not, not before this e-mail, no.

17 Q Did he, so there still wasn't a date set for the next
18 meeting?

19 A No, there was not.

20 Q So let me direct your attention now to General Counsel
21 Exhibit 31, an information request.

22 A Yes. And the request is that date still.

23 Q I see. These items that you're requesting, were they
24 responded to?

25 A He responded as to whether or not he'd provide them, yes,

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1 they were all provided.

2 Q Okay. And still no date set for contract negotiations?

3 A As of October 29th, no.

4 Q So now, if you, take a look at the next two exhibits, 32
5 and 33, there is a gap here and 32, was that sent by you and 33

6 is sent from Mr. Lofland? I'm looking at for November 1

7 through November 12. What contact had there been between you

8 and Mr. Lofland, between the first and the 12th of November?

9 A There was no contact between us, between, in that time,
10 until the 12th.

11 Q Okay. And that's when you set the next available dates?

12 A That's when he proposed dates that they'd be available,
13 yes.

14 Q And then General Counsel's 34 is his response to your
15 information request, correct?

16 A Yes.

17 Q That's five pages? There's two pages and then an
18 attachment?

19 A Yes, that's right.

20 Q Was his letter on, and attachments on November 20th
21 responsive to the information that you requested on October
22 29th?

23 A He responded to each question, item asked, but not all of
24 the items were provided, no.

25 Q Okay. Can you tell us what wasn't provided?

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1 A So how much our bargaining unit members have been paid was
2 not provided.

3 Q Is that number two?

4 A Number two, yeah. And then, number four, on the second
5 page, in terms of the taxes spent on our bargaining members was
6 not paid. And then we had asked for, four and five was, his
7 four and five was a split. I had asked for taxes and benefits
8 paid each month for the workers in total.

9 Q I see. So did, on number five he says, "I previously
10 provided the cost of insurance."

11 A Well that was, at one point in time, with the cost of the
12 insurance was and how many people were utilizing it, but what
13 we had asked for was how much the, how much, you know, what was
14 the cost for our workers in total for the month, you know, so
15 that, the number of people on the health care plan could change
16 from month-to-month and that was the taxes --

17 Q And that was employee health insurance you're referring
18 to?

19 A Yes.

20 Q Anything else?

21 A That was it. Everything else was provided, yeah.

22 Q Okay.

23 A Well at --

24 Q I, were you going to say something else?

25 A Well the house manager position was stated to be enclosed,

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